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**MATERIALS ILLUSTRATIVE
OF
AMERICAN GOVERNMENT**

THE CENTURY
POLITICAL SCIENCE SERIES

EDITED BY FREDERIC A. OGG, *University of Wisconsin*

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MATERIALS ILLUSTRATIVE OF AMERICAN GOVERNMENT

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NEW YORK
THE CENTURY CO.

1925



342.73

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PREFACE

This collection of materials is designed to supplement the standard text-books on American Government. It had its origin in attempts to make the subject more vivid to my own students through the use of some of these documents. The processes of government often present a great deal of difficulty to the undergraduate because of their complexity. By using materials which show, in their original form, the results, as well as the methods, of governmental operations, I have found that students more readily understand them. While it is obvious that documentary records cannot be expected to give a complete view of an important situation or development, they certainly help to round out the picture. They also furnish valuable case material from which the instructor can help the student deduce the principles upon which the processes are based.

Before finally selecting the materials to be included in this collection, a tentative list of contents was sent to a number of instructors in various colleges and universities, with a request for suggestions of additions or omissions. As was to be expected, the replies showed that no two persons would make precisely the same selection; but in almost every case valuable suggestions were offered. Upon the basis of these reactions, a second list of contents was compiled; and this was discussed with several instructors in personal conferences. The final choice, therefore, represents something approaching a coöperative effort, even though I alone must assume the responsibility for the principles upon which the documents were selected, as well as for the actual list as ultimately made up.

In choosing materials for inclusion, I have been guided by the following considerations:

- (1) Primary source material has been preferred to sec-

ondary, and documents and forms to descriptions of governmental operations. This has made the collection something in the nature of a case-book. But that is not entirely undesirable, in view of the fact that it is the function of the text-book to supply descriptive information.

(2) Longer passages from a smaller number of documents have been included, rather than mere fragments from a wider range. Whenever possible, the student has been shown a complete process or performance, rather than a mere portion of one. In some of the very long documents it has been necessary to make cuts in order to keep the book within reasonable compass. But, in general, only formal duplications, or the least significant portions, have been omitted. In each case the aim has been to present enough material from one source to focus the attention of the student definitely on the problem raised, and to prevent the distractions which result from frequent changes of style and subject.

(3) Several expedients have been used to conserve space and to prevent the book from becoming too bulky for use as a supplementary text. When a selection would illustrate a point of view or an argument as well as a form, it has been included rather than another which would illustrate only the form. The material on state government has been selected with the thought that much of it can be used to illustrate analogous subjects or problems arising in the national sphere. Much valuable material on American Government can be secured in pamphlet form, either gratis or for a nominal sum. A list of such publications is given in the appendix, together with the price and source from which each can be secured. Regardless of its value, material of this kind has been omitted from the present collection. It can easily be selected and procured by any instructor, according to his needs.

(4) Preference has been given to documents which have not as yet been published in book form. Some of the numbers have been taken from manuscripts; others from pamphlets which are not readily accessible in quantities suffi-

cient for class use. In a few cases, material has been furnished directly by officers of the government.

(5) Selections which will stimulate class discussion have been given preference to more formal documents. Many of the items present a distinct case or process of governmental procedure; others are on highly controversial topics; still others contain the barest statement of facts, inviting the student, under the guidance of the instructor, to work out his own conclusions.

Undoubtedly, these materials will prove most useful in discussion groups, quiz sections, or small classes. In many instances a mere reading of the document is insufficient. The student may, indeed, miss the point entirely in his reading, while at the same time the document may assume an unexpected importance and vividness as the result of a spirited class discussion. The introductory notes have been written with a view to facilitate such discussion. No attempt has been made to summarize or condense the accompanying selection. The aim has been only to furnish a background for the document and to prepare the student for reading it. Although the collection has followed the arrangement of Ogg and Ray's *Introduction to American Government* (2d ed.), adequate background material for the selections will be found in any standard college text on the subject.

It is hardly feasible to mention by name the many persons who have aided me with material or suggestions. To all of them I am grateful. I cannot refrain, however, from expressing appreciation of the encouragement and suggestions received from Professor Frederic A. Ogg, under whose general direction the book has been published.

RODNEY L. MOTT,

University of Chicago,

CONTENTS

PART I

	PAGE
THE FOUNDATIONS OF GOVERNMENT IN THE UNITED STATES	3
CHAPTER	
1. COMMISSION TO DONGAN AS GOVERNOR OF NEW YORK . . .	3
2. JAMES MADISON ON THE REPUBLICAN CHARACTER OF THE CONSTITUTION	9
3. JAMES MADISON ON THE SEPARATION OF POWERS	18
4. ALEXANDER HAMILTON ON THE ADVANTAGE OF A SINGLE EXECUTIVE	23
5. M'CULLOCH V. MARYLAND: THE DOCTRINE OF IMPLIED POWERS .	30
6. MARBURY V. MADISON: AN ACT OF CONGRESS HELD UNCONSTITUTIONAL	41
7. INTERSTATE RENDITION OF CRIMINALS	47
8. A COLLECTIVE NATURALIZATION ACT	55
9. UNITED STATES V. WONG KIM ARK: CHINESE CITIZENSHIP CASE	56
10. THE NINETEENTH AMENDMENT	62
11. PROPOSED AMENDMENTS TO THE UNITED STATES CONSTITUTION	65

PART II

THE NATIONAL GOVERNMENT	70
12. THE PRESIDENTIAL SUCCESSION ACT OF 1886	70
13. CALL FOR A REPUBLICAN NATIONAL CONVENTION (1924) . . .	72
14. COUNTING OF THE ELECTORAL VOTE	76
15. THE PRESIDENT'S CALENDAR	85
16. RECOGNITION OF PANAMA	86
17. A COMMERCIAL TREATY WITH JAPAN	89
18. A PRESIDENTIAL VETO	98
19. LINCOLN AND THE ADMISSION OF NEVADA	109
20. EXTENSION OF THE MERIT SYSTEM	111
21. A UNITED STATES CIVIL SERVICE EXAMINATION	112

CHAPTER	PAGE
22. AN OPINION OF AN ATTORNEY GENERAL	116
23. FRAUD ORDERS ISSUED BY THE POST OFFICE DEPARTMENT . . .	121
24. APPORTIONMENT ACT OF 1911	126
25. RULES OF THE HOUSE OF REPRESENTATIVES	128
26. PREAMBLE AND RULES ADOPTED BY A DEMOCRATIC CAUCUS . .	135
27. THE HOUSE CALENDARS	137
28. LOBBIES AND LOBBYISTS IN WASHINGTON	145
29. SHOPMEN'S STRIKE INJUNCTION (1922)	150
30. THE CHILD LABOR TAX CASE	157
31. THE BUDGET SYSTEM AND ECONOMY	163
32. GIBBONS V. OGDEN: THE POWER OF CONGRESS OVER INTERSTATE COMMERCE	174
33. THE INTRA-STATE RATE CASE	180
34. A DECISION OF THE INTERSTATE COMMERCE COMMISSION . . .	187
35. HAMMER V. DAGENHART: THE FIRST CHILD LABOR CASE . . .	189
36. DECLARATION OF WAR WITH GERMANY	198
37. A LITERACY TEST FOR VOTING	199

PART III

STATE AND LOCAL GOVERNMENT	207
38. AN ACT CALLING A CONSTITUTIONAL CONVENTION (MASSACHU- SETTS, 1919)	207
39. ORGANIZATION OF A CONSTITUTIONAL CONVENTION (NEBRASKA, 1919)	211
40. STATISTICS SHOWING INEQUALITIES OF REPRESENTATION . . .	219
41. THE CLEVELAND PROVISION FOR PROPORTIONAL REPRESENTATION	227
42. A PROPORTIONAL REPRESENTATION TALLY SHEET	234
43. THE MASSACHUSETTS PROVISION FOR THE INITIATIVE AND REFER- ENDUM	235
44. AN INITIATED AMENDMENT, WITH ARGUMENTS FROM A PUBLICITY PAMPHLET	246
45. RULES OF THE MASSACHUSETTS GENERAL COURT	249
46. CHARLES MCCARTHY ON LEGISLATIVE REFERENCE LIBRARIES . .	255
47. THE WISCONSIN ANTI-LOBBYING LAW	259
48. A CALL FOR A SPECIAL SESSION OF A LEGISLATURE	263
49. THE ILLINOIS ADMINISTRATIVE CODE	265
50. THE MARYLAND BUDGET	282

CONTENTS

xi

CHAPTER	PAGE
51. A REPORT OF A STATE COMMITTEE ON LOCAL TAX ASSESSMENTS .	289 289
52. FORMS OF JUDICIAL DOCUMENTS	296
53. RULES OF THE REPUBLICAN PARTY OF PENNSYLVANIA	301
54. THE MINNESOTA CORRUPT PRACTICES ACT	310
55. SAMPLE BALLOTS	320
56. THE OHIO PROVISION FOR MUNICIPAL HOME RULE	331
57. THE MASSACHUSETTS OPTIONAL CHARTER LAW	335
58. A CITY MANAGER CHARTER	344
APPENDIX I	363
APPENDIX II	380
APPENDIX III	382
TABLE OF CASES	385
INDEX	387

**MATERIALS ILLUSTRATIVE
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PART I

THE FOUNDATIONS OF GOVERNMENT IN THE UNITED STATES

1. Commission to Dongan as Governor of New York

Speaking broadly, the commission and instructions to the governor formed the constitution of a royal colony. The commission was a formal document published at the governor's accession as evidence of his authority to govern the colony. The instructions were less formal and were frequently kept secret unless the governor chose to make portions of them public. In general, "the commission contained a grant of power, while the instructions told how that power should be used and often limited its scope."¹

The commission to Governor Dongan in 1686 is interesting not only because it is typical of this kind of document, but also because it marks an important step in the long struggle of the colonies for an increasing measure of self-government. Even before 1685, while New York was still a proprietorship of the Duke of York, the colony gradually managed to secure a limited amount of control over its own affairs. Thus, in 1682 the Duke reluctantly yielded to its demands and authorized the newly appointed Governor Dongan to call a representative assembly to advise him in levying taxes and passing laws. But in 1685 Charles II died and the Duke came to the throne as James II. Immediately the whole status of the colony changed; it automatically became a royal province under the direct administration of the Lords of Trade and subject to the personal control of the King.

James determined to use his increased power to coordinate the royal provinces in America more closely under

¹ E. B. Greene, *Provincial Governor* (New York, 1898), 94.

the control of London, and with this in view he sent a new commission to Dongan in 1686 in which all reference to a representative assembly was omitted. Under its terms all powers of legislation and taxation were to be once more vested in the governor and council.

This commission, indeed, was merely a preliminary to a still greater centralization under royal control; for two years later New York was annexed to New England and the entire district placed under the administration of Governor Andros. The attempts of the latter, however, to bring the various provinces into a more unified scheme of government were frustrated by the Revolution of 1688-89.

SOURCE—J. R. Brodhead, *Documents Relative to the Colonial History of the State of New York* (Albany, 1853), III, 377-382.

James the Second by the grace of God king of England, Scotland, France and Ireland Defender of the ffaith &c To our trusty and welbeloved Thomas Dongan Esq^r Greeting. Wee reposing especial trust and confidence in the prudence, Courage and loyalty of you the said Thomas Dongan out of our especial Grace certain knowledge and meer motion Have thought fit to constitute and appoint and Wee doe by these presents constitute and appoint you the said Thomas Dongan to bee our Captain General and Governor in chief in and over our Province of New York and the Territories depending thereon in America. And Wee doe hereby require and command you to doe and execute all things in due manner that shall belong unto your said command and the trust wee have reposed in you, according to the several powers and directions granted or appointed you by this present Commission and the instructions herewith given you, or by such further powers, Instructions and authoritys as shall at any time hereafter be granted or appointed you under our Signet and Signe Manual, or by our order in our Privy Council, and according to such reasonable laws and Statutes as now are in force or hereafter shall be made and agreed upon by you with the advice and consent of the Council of our said Province under your Government in such manner & form as is hereafter expressed.

And wee doe hereby give and grant full power to you the said Thomas Dongan, after you shall have first taken an oath for the due execution of the Office and Trust of our Captain General and

Governor in Chief in and over our said province of New York and the Territorys depending thereon (which our said Council or any five of them have hereby full power and Authority and are required to administer unto you) to give and administer to each of the members of our said Council as well the Oath of Allegiance as the Oath for the due execution of their places and trust.

And wee doe hereby give & grant unto you full power and authority to suspend any of the members of our said Council from sitting, voting and assisting therein, if you shall find just cause for soe doing.

And if it shall at any time happen that, by the death, departure out of our said Province or suspension of any of our Councilors, there shall bee a Vacancy in Our said Council (any three whereof wee doe hereby appoint to bee a Quorum) Our will and pleasure is That you signify the same unto us by the first opportunity that wee may under our signet and sign manual, constitute and appoint others in their Room. But that our Affairs, at that distance may not suffer for want of a due number of Counselors if ever it shall happen that there be less than seven of them residing in our said province, Wee doe hereby give and grant unto you full power and authority to chuse as many persons out of the principal ffreeholders, Inhabitants thereof, as will make up the full number of our said Council to bee seven and noe more. Which persons by virtue of such choice shall be to all intents and purposes Councilors in our said Province untill they shall be confirmed by us, under our Sign Manual and Signet, the said Council shall have seven persons in it.

And wee doe hereby give and grant unto you full power and Authority, with the advice and consent of our said Council or the major part of them, to make, constitute and ordain Laws, Statutes and Ordinances for the publick peace, welfare & good Government of our said Province and of the people and inhabitants thereof and such others as shall resort thereto, and for the benefit of us, our heirs and successors.

Which said Laws, Statutes and Ordinances are to bee (as near as conveniently may bee) agreeable to the Laws and Statutes of this Our Kingdom of England.

Provided that all such Laws, Statutes and Ordinances of what nature or duration soever bee within three months or sooner after the making thereof transmitted unto us under our Seal of New

York for our Allowance and approbation of them, as alsoe Dupli-
cats thereof by the next conveyance.

And wee doe by these presents give and grant unto you full
power and Authority by & with the advice and Consent of our
said Council or the major part of them to Impose and Assess,
raise and levy such rates and Taxes as you shall find necessary
for the support of our Government of New York, to bee collected
and levied and to bee employed to the uses aforesaid in such
manner as to you and to our said Council or y^e major part of
them shall seem most equal and reasonable.

And for the better supporting the charge of the Government
of our said Province, our will and pleasure is and wee doe by these
presents authorize & require you the said Thomas Dongan and
Our said Council to continue such Taxes and Impositions as are
now laid and imposed upon y^e Inhabitants thereof, and to levy
and distribute or cause the same to bee levied & distributed to
those ends in the best and most equall manner they can untill
you shall by & with the consent of our said Council agree on and
setle such other Taxes as shall bee sufficient for the support of
Our Government, which are to bee applied to that use and noe
other.

And our will and pleasure is that you shall & may keep &
use y^e publick Seal appointed or to bee appointed by us for our
Province of New York. . . .

And wee doe further give and grant unto you full power and
Authority, with the advice and consent of our said Council to
erect, constitute and establish such and soe many Courts of Judi-
cature and publiq' Justice within our said Province and the Ter-
ritorys under Yo^r Government as you and they shall think fit
and necessary for y^e hearing & Determining of all Causes as well
Criminal as Civil according to Law and Equity, and for awarding
of Execution thereupon with all reasonable and necessary powers
Authoritys fees and Privileges belonging unto them; as alsoe to
appoint and Commissionat fitt persons in the several parts of
your Governm^t to administer the Oath of Allegiance unto such as
shall be obliged to take the same.

And wee doe hereby authorize and empower you to constitute
and appoint Judges, Justices of y^e peace and other necessary
Officers & Ministers in our said Province of New York for the
better administration of Justice and putting the Laws in execu-
tion. And to administer such Oath or Oaths as are usually given

for the due execution and performance of Offices and places, and for the clearing of Truth in Judicial Causes.

And wee doe further by these presents will and require you to permit appeals to be made in cases of Error from our Courts of New York, unto our Governor and Council in Civil Causes; provided the value appealed for doe exceed the summ of one hundred pounds sterl, And that security bee first duly given by the Appellant to answer such Charges as shall bee awarded in case the first sentence shall be affirmed.

And whereas wee Judge it necessary that all Our Subjects may have liberty to appeal to Our Royal person in cases that may require the same; Our will and pleasure is that if either party shall not rest satisfied with the Judgement or Sentence of Our Gov^r & Council they may then appeal unto us in Our Privy Council. Provided the matter in difference exceed the real value and summ of Three hundred pounds sterl^e and that such Appeal be made within one fortnight after sentence And that security bee likewise duly given by the Appellant to answer such charges as shall bee awarded in case the sentence of y^e Govern^t and Council bee confirmed; And provided alsoe that Execution bee not suspended by reason of any such appeal unto us.

And wee doe hereby give and grant unto you full power and authority where you shall judge any Offender or Offenders in Criminal Matters or for any ffines or forfeitures due unto us fit objects of our Mercy, to pardon and remit all such Offenders, ffines or forfeitures before or after Sentence given, Treason & wilful Murther only excepted; In which cases you shall likewise have power, upon extraordinary occasions to grant Repreives to the Offenders until our Royall pleasure may be known therein.

And wee doe, by these presents authorize and impower you to collate any person or persons in any churches, chapells, or other Ecclesiastical Benefices within our said Province and Territorys aforesaid as often as any of them shall happen to bee void.

And wee doe hereby give & grant unto you the said Thomas Dongan, by Yo^r self, your Captains & Commanders by you to bee authorized, full power and authority to levy, arm, muster, command and imploy all persons whatsoever residing within Our said Province of New York and other the Territorys under your Government; And as occasion shall serve them to transferr from one place to another for the resisting and withstanding of all Enemys, Pirats and Rebels both at Sea and at Land. And to

transport such forces to any of our Plantations in America as occasion shall require for the defence of the same against the Invasion or Attempts of any of our Enemys.

And them, if occasion shall require, to pursue and prosecute in or out of the limits of our said Province and Plantations or any of them.

And, if it shall soe please God, them to vanquish apprehend and take, and being taken either according to the law of Arms, to put to death or keep and preserve alive at your discretion.

And to execute Martial Law in the time of Invasion, Insurrection or Warr, and during the continuance of the same, as alsoe upon Soldiers in pay. And to doe and execute all and every other thing or things which to a Captain General doth or ought of right to belong, as fully & amply as any our Captain General doth or hath usually done.

And wee doe hereby give and grant unto you full power and authority to erect, raise and build in our Province and Territorys aforesaid or any of them such and soe many fforts Platforms, Castles, Cittyes, Burroughs, Townes and ffortifications as you shall judge necessary. . . .

And our further will and pleasure is That you shall not at any time hereafter, by colour of any power or authority hereby granted or mentioned to bee granted, take upon you to give, grant or dispose of any office or Place within our Province and Territorys, which now are or shall bee granted under the Great Seal of England, any further than that you may upon the vacaney of any such Office or suspension of any Officer by you, put in any person to officiate in the Intervall until the said place bee disposed of by us under the Great Seal of England, or that our Directions be otherwise given therein.

And wee doe hereby require and command all Officers and Ministers Civil and Military, and all other Inhabitants of our said Province and the Territorys depending thereon to bee obedient, ayding and assisting unto you the said Thomas Dongan in the Execution of this our Commission, and of the Powers and Authoritys therein contained;

And in case of Your Death or absence out of Our said Province unto such person as shall bee appointed by us to bee Commander in Cheif, to whom wee doe therefore by these Presents give and grant all and singular y^e powers and Authoritys aforesaid to bee executed and enjoyed by him during our pleasure,

or until your arrival within Our said Province of New York. And if upon such Death, or absence there bee noe person upon the place Commissioned or appointed by us to bee Commander in Cheif, Our will and pleasure is That the then present Council of that our Province doe take upon them the Administration of the Government, and execute this Commission and the several powers and Authoritys herein contained, And that the first Councilor, who shall be at the time of Your Death or absence residing within Our Province of New York, doe preside in Our said Council, with such powers and prehemenencies as any former president hath used and enjoyed within Our said Province or any other our Plantations in America, untill our pleasure bee further known, or your arrival as aforesaid.

And lastly wee doe hereby declare, ordain and appoint That you the said Thomas Dongan shall and may hold, execute and enjoy the office and Place of Captain General and Governor in Cheif in and Over our Province of New York and the Territorys depending thereon, together with all and singular the powers and Authoritys hereby granted unto you for and during Our will and pleasure. In witness &c

Great Seale, dated 10 June 1686 in

y^o second year of the King.

2. James Madison on the Republican Character of the Constitution

THE contest for the ratification of the Constitution of 1787 yielded a flood of controversial publications on both sides. This literature ranges all the way from flaming handbills, which aimed to play on the passions and emotions of the reader, to carefully reasoned arguments calculated to appeal to thoughtful men. By far the best example of the latter type of persuasion was a series of articles published in New York in the *Independent Journal*, the *Packet*, and the *Daily Advertiser*, and subsequently collected under the title of "The Federalist." Madison's account of the genesis and authorship of these essays is as follows:

"The papers under the Title of 'Federalist' and signature of 'publius' were written by A[lexander] H[amilton],

J[ames] M[adison,] and J[ohn] J[ay] in the latter part of the year 1787—and the former part of the year 1788. The immediate object of them was to vindicate and recommend the new Constitution to the State of N.Y. whose ratification of the instrument, was doubtful as well as important. The undertaking was proposed by A.H. (who had probably consulted with Mr. Jay and others) to J.M. who agreed to take a part in it. The papers were originally ‘addressed to the people of N.Y. under the signature of a Citizen of N.Y.’ This was changed for that of ‘Publius,’ the first name of Valerius Publicola. A reason for the change was that one of the Writers was not a citizen of that State: another that the publication had diffused itself among most of the other States. The papers were first published at N.Y. in a Newspaper printed by Francis Childs at the rate during great part of the time at least of four numbers a week; and notwithstanding this exertion, they were not completed till a large proportion of the States had decided on the Constitution. They were edited as soon as possible in two small vols. the preface to the 1st vol: drawn up by Mr. H bearing date N. York Mar 1788. . . .

J:M.

MONTPELIER July 28, 1818.”¹

It seems probable that the influence of these papers on the attitude of the people of New York toward the new Constitution has been overestimated. “A good Federalist could only say of the work of ‘Publius’ that ‘he is certainly a judicious and ingenious writer, though not well calculated for the common people.’ As for the Anti-federalists, they made no pretense of regarding the arguments. ‘The Federalist’ as he terms himself, wrote one, or ‘Publius’ puts me in mind of some of the gentlemen of the long robe when hard pressed, in a bad cause with a rich client. They frequently say a good deal which does not apply; but yet if it will not convince the judge and jury, may perhaps, help to make them forget some part of the evidence—embarrass their opponents, and make the audience stare.”

¹P. L. Ford [ed.], *The Federalist* (New York, 1898), pp. xlix-l.

"The New York elections for delegates to the state convention well proved that 'Publius' had written in vain, for only one-third of the men chosen were Federalists—making the contest one of the most crushing defeats ever experienced."¹

The importance of the *Federalist* lies, therefore, in the fact that it was the ablest exposition of the meaning of the new Constitution, rather than in its influence upon the masses. Its prestige steadily increased after the ratification of the Constitution by New York in 1788, and since that time it has passed through some twenty editions. For many years it was used as the principal text-book and commentary on the new Constitution, as well it might be. As was said by Noah Webster, "It would be difficult to find a treatise which, in so small a compass, contains so much valuable political information, or in which the true principles of republican government are unfolded with such precision."² Indeed, so cogent was the reasoning of many of the numbers, that some of them have been followed almost literally by the United States Supreme Court. Taken as a whole, the work "presents the political science of the new system as conceived by three of the profoundest thinkers of the period."³

The three numbers chosen for reprint in this volume (39, 48, 70)⁴ have been selected to illustrate not only the literary style and method of reasoning of the authors, but also to summarize their philosophy of government, as far as this is possible in so small a compass. Number 39, written by James Madison, contains one of the most lucid analyses of the meaning of "republican government" to be found anywhere, and is the most frequently quoted of all of Madison's contributions to the series. The text followed

¹ *Ibid.*, pp. xxiv-xxv.

² *American Magazine*, March, 1788, quoted by Ford, *op. cit.*, p. xxviii.

³ C. A. Beard, *Economic Interpretation of the Constitution* (New York, 1913), 153.

⁴ Were it not for the fact that the reasoning of *Marbury v. Madison*, 3 Cranch (U. S. 1803), 137 (*post.*, p. 41) is taken directly from *The Federalist*, Number 78 by Hamilton, that number would also have been included. It is probably the most quoted essay ever written by the first Secretary of the Treasury.

in all cases is that of P. L. Ford in his excellent edition of the *Federalist* published in 1898.

SOURCE—*The Federalist*, No. 39. First published in the *Independent Journal*, Jan. 16, 1788. Text from P. L. Ford [ed.], *The Federalist* (New York, 1898), 245-252.

To the People of the State of New York; . . .

The first question that offers itself is whether the general form and aspect of the government be strictly republican. It is evident that no other form would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution; or with that honorable determination which animates every votary of freedom to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

What, then, are the distinctive characters of the republican form? Were an answer to this question to be sought, not by recurring to principles, but in the application of the term by political writers to the constitutions of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions.

If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived

from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the co-ordinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it. The House of Representatives, like that of one branch at least of all the State legislatures, is elected immediately by the great body of the people. The Senate, like the present Congress and the Senate of Maryland, derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people, according to the example in most of the States. Even the judges, with all other officers of the Union, will, as in the several States, be the choice, though a remote choice, of the people themselves. The duration of the appointments is equally conformable to the republican standard and to the model of State constitutions. The House of Representatives is periodically elective, as in all the States; and for the period of two years, as in the State of South Carolina. The Senate is elective, for the period of six years; which is but one year more than the period of the Senate of Maryland, and

but two more than that of the Senates of New York and Virginia. The President is to continue in office for the period of four years; as in New York and Delaware the chief magistrate is elected for three years, and in South Carolina for two years. In the other States the election is annual. In several of the States, however, no constitutional provision is made for the impeachment of the chief magistrate. And in Delaware and Virginia he is not impeachable till out of office. The President of the United States is impeachable at any time during his continuance in office. The tenure by which the judges are to hold their places is, as it unquestionably ought to be, that of good behavior. The tenure of the ministerial offices generally will be a subject of legal regulation, conformably to the reason of the case and the example of the State constitutions.

Could any further proof be required of the republican complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter.

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the *federal* form, which regards the Union as a *Confederacy* of sovereign states; instead of which, they have framed a *national* government, which regards the Union as a *consolidation* of the States." And it is asked by what authority this bold and radical innovation was undertaken? The handle which has been made of this objection requires that it should be examined with some precision.

Without inquiring into the accuracy of the distinction on which the objection is founded, it will be necessary to a just estimate of its force, first, to ascertain the real character of the government in question; secondly, to inquire how far the convention were authorized to propose such a government; and thirdly, how far the duty they owed to their country could supply any defect of regular authority.

First—In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers; to the extent of them; and to the authority by which future changes in the government are to be introduced.

On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a *national*, but a *federal* act.

That it will be federal and not a national act, as these terms are understood by the objectors—the act of the people, as forming so many independent States, not as forming one aggregate nation—is obvious from this single consideration, that it is to result neither from the decision of a *majority* of the people of the Union, nor from that of a *majority* of the States. It must result from the *unanimous* assent of the several States that are parties to it, differing no otherwise from their ordinary assent than in its being expressed, not by the legislative authority, but by that of the people themselves. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined, either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a *federal* and not a *national* constitution.

The next relation is to the sources from which the ordinary powers of government are to be derived. The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is *national*, not *federal*. The Senate, on the other hand, will derive its powers from the States, as political and coequal societies; and these will be represented

on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*. The executive power will be derived from a very compound source. The immediate election of the President is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct and coequal societies, partly as unequal members of the same society. The eventual election, again, is to be made by that branch of the legislature which consists of the national representatives; but in this particular act they are to be thrown into the form of individual delegations, from so many distinct and coequal bodies politic. From this aspect of the government it appears to be of a mixed character, presenting at least as many *federal* as *national* features.

The difference between a federal and national government, as it relates to the *operation of the government*, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy, in their political capacities; in the latter, on the individual citizens composing the nation, in their individual capacities. On trying the Constitution by this criterion, it falls under the *national*, not the *federal* character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a *national* government.

But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the *extent* of its powers. The idea of a national government involves in it not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local

authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.

If we try the Constitution by its last relation to the authority by which amendments are to be made, we find it neither wholly *national* nor wholly *federal*. Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established government. Were it wholly federal, on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the convention is not founded on either of these principles. In requiring more than a majority, and particularly in computing the proportion by *States*, not by *citizens*, it departs from the *national* and advances toward the *federal* character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the *federal* and partakes of the *national* character.

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is

partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

PUBLIUS.

3. James Madison on the Separation of Powers

This number of the *Federalist* contains an excellent brief statement of the means by which the framers of the Constitution hoped to give effect to the principle of separation of powers.

SOURCE—*The Federalist*, No. 48. First published in the *New York Packet*, Feb. 1, 1788. Text from P. L. Ford [ed.], *The Federalist* (New York, 1898), 327-333.

To the People of the State of New York: . . .

It is agreed, on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark with precision the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions.¹ But experience assures us that the efficacy of the

¹ It is possible that Madison had in mind the last section of the Bill of Rights of the Massachusetts Constitution adopted in 1780.

"XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either

provision has been greatly overrated, and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

It is interesting to compare this statement of the principle with that in the Arizona Constitution, framed in 1910.

"ARTICLE III.

Distribution of Powers.

"The powers of the government of the State of Arizona shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and, except as provided in this Constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others."—EDITOR.

incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory evidence, I will refer to the example of two States, attested by two unexceptional authorities.

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting "Notes on the State of Virginia," p. 195. "All the

powers of government—legislative, executive, and judiciary—result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because, in that case, they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, *in many instances, decided rights* which should have been left to *judiciary controversy*, and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar.*”

The other State which I shall take for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was “to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution.” In the execution of this trust the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers

of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of the legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: *first*, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; *secondly*, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; *thirdly*, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is that a mere demarcation on parchment of the con-

stitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

PUBLIUS.

4. Alexander Hamilton on the Advantages of a Single Executive

In this essay Hamilton was writing on a subject closer to his heart than any other with which he dealt in his *Federalist* contributions. The result was probably the strongest defense of a single executive to be found in political literature.

SOURCE—*The Federalist*, No. 70. First published in the *Independent Journal*, Mar. 15, 1788. Text from P. L. Ford [ed.], *The Federalist* (New York, 1898), 466-475.

To the People of the State of New York:

There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation; since they can never admit its truth, without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of Dictator, as well against the intrigues of ambitious individuals who aspired to the tyranny and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execu-

tion of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, What are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety, in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people; secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views have declared in favor of a single Executive and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counselors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men. Both these methods of destroying the unity of the Executive have their partisans;

but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches anything, it teaches us not to be enamored of plurality in the Executive. We have seen that the Achæans, on an experiment of two Prætors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissensions between the Consuls, and between the military Tribunes who were at times substituted for the Consuls. But it gives us no specimens of any peculiar advantages derived to the State from the circumstance of the plurality of those magistrates. That the dissensions between them were not more frequent or more fatal is matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the circumstances of the State, and pursued by the Consuls, of making a division of the government between them. The patricians engaged in a perpetual struggle with the plebeians for the preservation of their ancient authorities and dignities; the Consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defense of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the Consuls to divide the administration between themselves by lot—one of them remaining at Rome to govern the city and its environs, the other taking the command in the more distant provinces. This expedient must, no doubt, have had a great influence in preventing those collisions and rivalships which might otherwise have embroiled the peace of the republic.

But quitting the dim light of historical research, attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject than to approve the idea of plurality in the Executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissensions are apt to

spring. Whenever these happen they lessen the respectability, weaken the authority, and distract the plans and operation of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the State. And what is still worse, they might split the community into the most violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments. Men of upright, benevolent tempers have too many opportunities of remarking with horror to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice, in the human character.

Upon the principles of a free government, inconveniences from the source just mentioned must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the Executive. It is here, too, that they may be most pernicious. In the legislature promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarrings of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection and serve to check excesses in the majority. When a resolution, too, is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate or atone for the disadvantages of dissension in the executive department. Here they are pure

and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the Executive which are the most necessary ingredients in its composition,—vigor and expedition,—and this without any counterbalancing good. In the conduct of war, in which the energy of the Executive is the bulwark of the national security, everything would be to be apprehended from its plurality.

It must be confessed that these observations apply with principal weight to the first case supposed—that is, to a plurality of magistrates of equal dignity and authority; a scheme, the advocates for which are not likely to form a numerous sect; but they apply, though not with equal, yet with considerable weight to the project of a council whose concurrence is made constitutionally necessary to the operations of the ostensible Executive. An artful cabal in that council would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the Executive, and which lies as much against the last as the first plan, is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds—to censure and to punishment. The first is the more important of the two, especially in an elective office. Man, in public trust, will much oftener act in such a manner as to render him unworthy of being any longer trusted than in such a manner as to make him obnoxious to legal punishment. But the multiplication of the Executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated that, where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pro-

nounce to whose account the evil which may have been incurred is truly chargeable.

“I was overruled by my council. The council were so divided in their opinions that it was impossible to obtain any better resolution on the point.” These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble, or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be collusion between the parties concerned, how easy it is to clothe the circumstances with so much ambiguity as to render it uncertain what was the precise conduct of any of those parties!

In the single instance in which the governor of this State is coupled with a council—that is, in the appointment to offices—we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases, indeed, have been so flagrant that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made the blame has been laid by the governor on the members of the council, who on their part have charged it upon his nomination; while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so unqualified and so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations that the plurality of the Executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power: *first*, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number as on account of the uncertainty on whom it ought to fall; and *secondly*, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.

In England the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom than to annex to the king a constitutional council who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department—an idea in-

admissible in a free government. But even there the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office, and may observe or disregard the council given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behavior in office, the reason which in the British Constitution dictates the propriety of a council not only ceases to apply, but turns against the institution. In the monarchy of Great Britain it furnishes a substitute for the prohibited responsibility of the chief magistrate, which serves in some degree as a hostage to the national justice for his good behavior. In the American republic it would serve to destroy, or would greatly diminish, the intended and necessary responsibility of the Chief Magistrate himself.

The idea of a council to the Executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted to be applicable to the case, I should contend that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE";¹ that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the Executive is rather dangerous than friendly to liberty.

A little consideration will satisfy us that the species of security sought for in the multiplication of the Executive is unattainable. Numbers must be so great as to render combination difficult, or they are rather a source of danger than of security. The united credit and influence of several individuals must be more formidable to liberty than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men as to admit of their interests and views being easily combined in a common enterprise by an artful leader, it becomes more liable to abuse, and more dangerous when abused,

¹ De Lolme.—PUBLIUS.

than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The Decemvirs of Rome, whose name denotes their number,¹ were more to be dreaded in their usurpation than any ONE of them would have been. No person would think of proposing an Executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers is not too great for an easy combination; and from such a combination America would have more to fear than from the ambition of any single individual. A council to a magistrate who is himself responsible for what he does are generally nothing better than a clog upon his good intentions, are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures too serious to be incurred for an object of equivocal utility. I will only add that, prior to the appearance of the Constitution, I rarely met with an intelligent man from any of the States who did not admit, as the result of experience, that the UNITY of the executive of this State was one of the best of the distinguishing features of our constitution.

PUBLIUS.

5. M'Culloch v. Maryland: The Doctrine of Implied Powers

The establishment of a United States bank under a charter granted by Congress was part of Hamilton's financial scheme for restoring the public credit after the Revolution. A bill to provide for this went through the Senate without opposition, but it was assailed in the House on the ground that it was unconstitutional. Jefferson led the attack on the measure, but he failed to convince Congress that Hamilton's arguments in its favor were unsound. Although the bank proved a substantial aid to the government in estab-

¹ Ten.—PUBLIUS.

lishing sound financial conditions, the Anti-Federalists continued to oppose it, and when its charter expired in 1811 an attempt to renew it was blocked. The War of 1812, however, again led to unsettled financial conditions and it became apparent that the bank must be reëstablished if the currency of the nation was to be placed on a sound basis. The act incorporating the second Bank of the United States was approved April 10, 1816.¹

The second bank eventually relieved the financial situation somewhat, but for several years it was very badly managed. Partly on this account, the country found itself in the midst of a serious business depression. The monetary stringency was particularly acute in the South and West, where a number of state banks were forced into insolvency. Because the blame for this condition was invariably laid on that "monster," the Bank of the United States, a considerable number of states enacted radical legislation against it. Indiana and Illinois prohibited it from establishing branches within their borders, and six other states, including Maryland, levied a prohibitive tax on either branches of the bank or bank notes which these branches should issue.² It seems probable that the opposition to the establishing of branches was not unwarranted, for they were in some instances dishonestly managed. The Baltimore branch alone incurred a loss of \$1,700,000, due to defalcation and other frauds. On February 11, 1818, the Maryland legislature levied a heavy stamp tax on all bank notes issued by banks not licensed by the state. This tax amounted to approximately two per cent. of the value of the note, and although the bank could have evaded it by paying a lump sum of \$15,000 per year to the treasurer of the state, either alternative was virtually prohibitive.

William M'Culloch was the cashier of the Baltimore branch of the United States Bank, and when the state demanded the stamp tax on the notes he had issued, he refused

¹ *U. S. Stat. at Large*, 266.

² These states were Tennessee, Georgia, North Carolina, Maryland, Kentucky, and Ohio. Charles Warren, *The Supreme Court in United States History* (Boston, 1922), I, 505-506.

payment. Thereupon John James brought a suit for himself and for the state of Maryland in order to collect this tax. The Maryland courts upheld the state statute and ordered M'Culloch to pay the sum levied, but he appealed to the United States Supreme Court. It took nine days to hear the arguments in the case; for six of the ablest constitutional lawyers of the country were engaged to fight it. Probably no decision was more important from the point of view of establishing the powers of the national government on a sound basis; and although the decision was unanimous, it aroused a great deal of opposition and came closer to dragging the court into politics than any other which it rendered, with the possible exception of that in the Dred Scott case.

SOURCE—M'Culloch *v.* the State of Maryland *et al.*, 4 Wheaton (U. S., 1819), 316; 4 L. Ed., 579.

Mr. Chief Justice MARSHALL delivered the opinion of the court

The first question made in the cause is, has Congress power to incorporate a bank? . . . :

This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist

If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in ex-

press terms, decided it, by saying, "this constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it.

The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, "any thing in the constitution or laws of any State to the contrary notwithstanding."

Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental or implied powers; and which requires that everything granted shall be expressly and minutely described. Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word "expressly," and declares only that the powers "not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;" thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to avoid those embarrassments. A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the ninth section of the 1st article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive

term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget, that it is *a constitution* we are expounding.

Although, among the enumerated powers of government, we do not find the word "bank" or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, *that* raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction, (unless the words imperiously require it,) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is, then, the subject of fair inquiry, how far such means may be employed

But the constitution of the United States has not left the right of Congress to employ the necessary means, for the execution

of the powers conferred on the government, to general reasoning. To its enumeration of powers is added that of making "all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof."

The counsel for the State of Maryland have urged various arguments, to prove that this clause, though in terms a grant of power, is not so in effect; but is really restrictive of the general right, which might otherwise be implied, of selecting means for executing the enumerated powers

But the argument on which most reliance is placed, is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but such only as may be "*necessary and proper*" for carrying them into execution. The word "*necessary*," is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple.

Is it true, that this is the sense in which the word "*necessary*" is always used? Does it always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense—in that sense which common usage justi-

fies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed, by these several phrases. This comment on the word is well illustrated, by the passage cited at the bar, from the 10th section of the 1st article of the constitution. It is, we think, impossible to compare the sentence which prohibits a State from laying "imposts, or duties on imports or exports, except what may be *absolutely* necessary for executing its inspection laws," with that which authorizes Congress "to make all laws which shall be necessary and proper for carrying into execution" the powers of the general government, without feeling a conviction that the convention understood itself to change materially the meaning of the word "necessary," by prefixing the word "absolutely." This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view.

Let this be done in the case under consideration. The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to

accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it. The powers vested in Congress may certainly be carried into execution, without prescribing an oath of office. The power to exact this security for the faithful performance of duty, is not given, nor is it indispensably necessary. The different departments may be established; taxes may be imposed and collected; armies and navies may be raised and maintained; and money may be borrowed, without requiring an oath of office. It might be argued, with as much plausibility as other incidental powers have been assailed, that the Convention was not unmindful of this subject. The oath which might be exacted—that of fidelity to the constitution—is prescribed, and no other can be required. Yet, he would be charged with insanity who should contend, that the legislature might not superadd, to the oath directed by the constitution, such other oath of office as its wisdom might suggest. . . .

In ascertaining the sense in which the word “necessary” is used in this clause of the constitution, we may derive some aid from that with which it is associated. Congress shall have power “to make all laws which shall be necessary and *proper* to carry into execution” the powers of the government. If the word “necessary” was used in that strict and rigorous sense for which the counsel for the State of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word, the only possible effect of which is to qualify that strict and rigorous meaning; to present to the mind the idea of some choice of means of legislation not straitened and compressed within the narrow limits for which gentlemen contend.

But the argument which most conclusively demonstrates the error of the construction contended for by the counsel for the State of Maryland, is founded on the intention of the Convention, as manifested in the whole clause

1st. The clause is placed among the powers of Congress, not among the limitations on those powers.

2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been,

or can be assigned for thus concealing an intention to narrow the discretion of the national legislature under words which purport to enlarge it

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved. If we look to the origin of corporations, to the manner in which they have been framed in that government from which we have derived most of our legal principles and ideas, or to the uses to which they have been applied, we find no reason to suppose that a constitution, omitting, and wisely omitting, to enumerate all the means for carrying into execution the great powers vested in government, ought to have specified this. Had it been intended to grant this power as one which should be distinct and independent, to be exercised in any case whatever, it would have found a place among the enumerated powers of the government. But being considered merely as a means, to be employed only for the purpose of carrying into execution the given powers, there could be no motive for particularly mentioning it

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous

opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government.

But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place

It being the opinion of the Court, that the act incorporating the bank is constitutional; and that the power of establishing a branch in the State of Maryland might be properly exercised by the bank itself, we proceed to inquire—

2. Whether the State of Maryland may, without violating the Constitution, tax that branch? . . .

That the power of taxing it by the States may be exercised so as to destroy it, is too obvious to be denied. But taxation is said to be an absolute power, which acknowledges no other limits than those expressly prescribed in the constitution, and like sovereign power of every other description, is trusted to the discretion of those who use it. But the very terms of this argument admit that the sovereignty of the State, in the article of taxation itself, is subordinate to, and may be controlled by the constitution of the United States. How far it has been controlled by that instrument must be a question of construction. In making this construction, no principle not declared, can be admissible, which would defeat the legitimate operations of a supreme government. It is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence. This effect need not be stated in terms. It is so involved in the declaration of supremacy, so necessarily implied in it, that the expression of it could not make it more certain

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to

create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic of the word *CONFIDENCE*. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which, would banish that confidence which is essential to all government.

But is this a case of confidence? Would the people of any one State trust those of another with a power to control the most insignificant operations of their State government? We know they would not. Why, then, should we suppose that the people of any one State should be willing to trust those of another with a power to control the operations of a government to which they have confided their most important and most valuable interests? In the legislature of the Union alone, are all represented. The legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence that it will not be abused. This, then, is not a case of confidence, and we must consider it as it really is.

If we apply the principle for which the State of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States

The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no

power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of United States, is unconstitutional and void

6. *Marbury v. Madison*: An Act of Congress Held Unconstitutional

The presidential election of 1800 resulted in such a decisive defeat of the Federalists that it became evident that on March 4, 1801, they would lose control of both the executive and legislative branches of the government. There remained but one branch in which they might perpetuate their power, and during the short period elapsing between the election and the inauguration of Thomas Jefferson every effort was made to find positions for Federalist sympathizers in the judiciary. President Adams appointed his Secretary of State, John Marshall, to the chief justiceship of the Supreme Court of the United States, and the expiring Congress, in a frantic effort to find new positions to fill, created a large number of judicial offices.

One of these acts was an amendment to the Organic Act of the District of Columbia to provide for the appointment of forty-two new justices of the peace. This act was passed less than a week before March 4, and President Adams did not make the appointments until March 2. His appointments were confirmed by the Senate the next day, and that evening the commissions, which would officially attest the appointments, were signed by the President. By the time the great seal of the United States had been affixed to these documents by the Secretary of State, it was too late to deliver them to the appointees, and they were left in the Department's offices awaiting delivery. The

following day Jefferson appointed James Madison Secretary of State and ordered him not to deliver some of the commissions to the "midnight appointees."

The office of justice of the peace was such a trifling one that most of those who were refused their commissions did not think it worth the cost of fighting a suit in the courts, but four of the appointees, William Marbury, Dennis Ramsay, Robert Hooe, and William Harper, applied to the United States Supreme Court for a writ of mandamus which would compel the Secretary of State to deliver the documents to them. The case was first heard in December, 1801, but due to a change in the term of the Supreme Court, no decision was rendered until February 24, 1803. The most important part of the opinion rendered by Chief Justice Marshall on that date is given in the following extract. The decision of the Court was unanimous.

The first part of the opinion declared that the appointment was complete when the commission had been signed and sealed, and therefore Marbury had a right to the document. The second portion of the opinion stated that it was proper for him to ask for a writ of mandamus to force an executive officer (*e.g.*, the Secretary of State) to deliver a document already prepared and rightfully belonging to him. Furthermore, it was pointed out that the Judiciary Act of 1789 had authorized the United States Supreme Court to "issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States." It was evident, Marshall declared, that under this provision Congress intended to give the Court the power to issue the writ in just such a case as the one at bar.

It was pointed out, however, that the Constitution strictly defined the *original* jurisdiction of the Supreme Court to include only "Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party."¹ Since the issuance of a writ of mandamus was by its very nature an exercise of *original* jurisdic-

¹ Article III, section 2, paragraph 2.

tion, it followed that the Supreme Court could only have that power if Congress could increase its original jurisdiction beyond that stipulated in the Constitution. But, it was declared, the Constitution specifically gave Congress power to change the *appellate* jurisdiction of the Court, and therefore, by implication it must be inferred that the framers of the document deliberately withheld from Congress the power to alter the *original* jurisdiction, when they failed to specify that Congress should have it. Upon this reasoning, Marshall concluded that the clause of the Judiciary Act which gave the Court the power to issue the writ of mandamus was contrary to the Constitution, and the only question which remained was whether the Supreme Court could for that reason refuse to give it effect.

SOURCE—*Marbury v. Madison*, 1 Cranch (U. S., 1803), 137; 2 L. Ed., 60.

Opinion of the court [by CHIEF JUSTICE MARSHALL]

The authority, therefore, given to the supreme court, by the act establishing the judicial courts of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution; and it becomes necessary to enquire whether a jurisdiction, so conferred, can be exercised.

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it.

That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns, to different departments, their respective powers. It may

either stop here; or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction, between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions—a written constitution—would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to

say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that "no tax or duty shall be laid on articles exported from any State." Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the judges to close their eyes on the constitution, and only see the law.

The constitution declares that "no bill of attainder or *ex post facto* law shall be passed."

If, however, such a bill should be passed and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare *one* witness, or a confession *out* of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument, as a rule for the government of *courts*, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words, "I do solemnly swear that I will administer

justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as _____ according to the best of my abilities and understanding, agreeably to *the constitution*, and laws of the United States.”

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the *supreme* law of the land, the *constitution* itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in *pursuance* of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that *courts*, as well as other departments, are bound by that instrument.

The rule must be discharged.

7. Interstate Rendition

The Constitution specifies that a state shall return a fugitive from justice if the governor of the state from which he fled demands the rendition.¹ In order to make this provision effective, Congress in 1793 provided that the governor should be responsible for the return of the criminal, but that the expenses of arrest and transportation must be paid by the demanding state.² For many years it was thought that the effect of the Constitution and this statute was to impose a positive legal obligation on the governor to have the criminal returned, and that should he refuse to do so, the courts could force him to perform the

¹ Article IV, section 2, clause 2.

² Act of Feb. 12, 1793, 1 Stat. L. 302.

duty. In the case of *Kentucky v. Dennison*,¹ however, the Supreme Court refused to issue a *mandamus* to compel the governor to return the fugitive, although they recognized that he had a strong "moral duty" to perform in this respect.

For the most part, the governors have not abused their discretion in the matter of interstate rendition, and ordinarily there has been little difficulty in returning a fugitive for trial in the state where the crime was committed. A number of cases have arisen, however, in which the governor has refused to give up the individual demanded by another state. In these cases some "higher law" is frequently invoked to justify the refusal, which is apt to be based on moral, humane, or even political considerations. The following opinion of Governor Cullom of Illinois represents possibly the most extreme case of this type on record.

SOURCE—Text in S. T. Spear, *The Law of Extradition* (Albany, 1885), 713-720.

On the 4th day of December, 1878, a requisition was presented to me, issued by the Governor of Pennsylvania, demanding the surrender of two citizens of Illinois, Michael Gaffigan and Michael Merrick, as fugitives from justice. This requisition was based upon an indictment charging the persons named with having murdered one Michael Durkin in the county of Schuylkill, Pennsylvania, on the 1st day of March, A. D. 1865

On presentation of the requisition, I issued my warrant, and the men were at once arrested, but they have not been surrendered to the agent of the Governor of Pennsylvania. I have been earnestly urged by counsel for the prisoners to withhold their surrender until cause should be shown for revoking my warrant. Being anxious to give the men all the benefits to which they are lawfully entitled, I have carefully considered the evidence submitted to me, and the arguments of counsel. The facts and reasons on which I am asked to revoke my warrant are very important, and demand the most earnest attention

It is undoubtedly the duty of the executive of each State to

¹ 24 Howard (U. S. 1860), 66.

give full effect to that provision of the Federal Constitution which requires the return of the fugitives from justice, and to respect all laws made for the purpose of enforcing that provision. I have no inclination to disregard the obligation thus created, even though no power exists by which my action could be controlled. On the other hand, the seizure of a citizen of this State and his forcible transportation to a distant jurisdiction, beyond all protection from the laws of his own State, is a proceeding so serious that it can only be justified by positive law and the concurrence of all the facts required by law. The Governor of a State has a very solemn duty to perform toward his own people, as well as toward other States. He should see that no violent proceedings be taken against citizens who rely on him for protection, unless such proceedings be fully warranted by law.

Since the arrest of Gaffigan and Merrick the following facts have been so well established by evidence submitted to me that I cannot doubt their truth:

In January, 1865, after the death of Durkin, Gaffigan and Merrick left the county of Schuylkill, Pennsylvania, where they lived up to that time. They were aged respectively twenty-one and twenty-two years. There is no evidence that they attempted to conceal their destination. They came to the State of Illinois, and in 1867 settled in Springfield, the capital of the State, where they have ever since resided. One of them has for years done business as a merchant on one of the principal streets of the city, and has held the office of County Inspector of Mines by appointment of the Board of Supervisors of Sangamon county. The other has acted as School Director of the town of Woodside in the same county. Both have borne their true names and have shown themselves as publicly as any other citizens.

Merrick was a married man when he came to Illinois; Gaffigan has married a citizen of this State since coming here. Both have families of children born in this State, and of very tender age. During the residence of these men here they have been in frequent communication with their friends in Schuylkill county, Pennsylvania, their old home. Some years ago Mrs. Merrick, accompanied by four of her children, visited the old home and spent some weeks there, the residence of herself and husband at Springfield, in this State, being known and spoken of among her acquaintances as is usual when persons visit a former place of abode.

The father of Gaffigan, who resided at St. Clair, Pennsylvania,

where the murder is alleged to have been committed, openly left that town in 1870 or 1871 for the avowed purpose of living with his son in Springfield, Illinois. After living a short time in Springfield he died, and the fact of his death was at once telegraphed to one Conroy, who was a constable of St. Clair, and a witness whose name was indorsed on the indictment. The remains of the elder Gaffigan were taken back to St. Clair, Pennsylvania, and interred in the presence of a large number of people. . . .

On the part of those who demand the surrender of the men it is alleged (and the statement is supported by affidavit) that the public prosecutor of the county of Schuylkill, Pennsylvania, in office at the time said indictment was found, and most, if not all of his successors up to a very recent date were ignorant of the whereabouts of the persons. This may be true, and I do not at all doubt it, but I think it clear that notwithstanding this, the whereabouts of the men was a matter of public and general notoriety in the county where the crime is alleged to have been committed, for from seven to twelve years before any action was taken for their arrest. They were in constant and open correspondence with their friends; the wife of one was at the old home for weeks; the father of the other openly left the old home to live with his son, and his body was taken back and publicly buried in the presence of a large number of people.

I feel entirely satisfied that, if the whereabouts of the men was unknown to the public prosecutors, it was because they did not take the slightest trouble to inquire. It is impossible that a fact so notorious to a multitude of people could be kept from a public officer if he had made the slightest effort to discover it. . . .

It is urged by those who support the requisition of the Governor of Pennsylvania that I have no discretion in the matter, but must surrender the men if the papers presented are regular on their face. And this is to my mind the most important question. Have I the right to consider any extraneous facts—the lapse of time, the passiveness of the public prosecutor of Pennsylvania, the hardships of respectable families in this State, or any other matter beyond the very letter of the record?

The Supreme Court of the United States, in the celebrated case of *Kentucky v. Dennison*, made use of language which would seem to justify the conclusion that the Governor of a State to whom a requisition is presented, demanding the return of an alleged fugi-

tive from justice, has only a ministerial duty to perform, and has no authority to look beyond the record. 24 Howard, 66.

The words used by the court are very strong, and if they are to be taken without qualification, would seem to be conclusive. Yet it is entirely certain that notwithstanding that decision it has been the practice of the Governors of many States to look beyond the papers presented. It is clear that where a prisoner is held to answer a criminal charge, in the State where found, he will not be surrendered upon the demand of the executive authority of another State. This has always been the practice in Illinois, as well as in all other States so far as I know. But since the case of *Kentucky v. Dennison*, the Supreme Court of the United States itself has conclusively shown that the words used by the court, in the case last cited, are not to be taken without qualification. In *Taylor v. Taintor* (16 Wallace, p. 366) a peculiar state of facts was shown. One McGuire was indicted in Connecticut and gave bail. He then went to the State of New York, but was taken from there on a requisition from the Governor of Maine, and was imprisoned in the State. He did not appear to answer the indictment in Connecticut, and forfeited his recognizance. Judgment being given against his bondsmen, they carried the case to the Supreme Court of the United States, where the judgment was affirmed. In discussing the questions presented the court say:

“Had the facts been made known to the executive of New York in time it is to be presumed he would have ordered McGuire to be delivered to them (the bondsmen), and not the authority of Maine.”

Again on page 374 the court say: “It is true the constitutional provision and the law of Congress under which the arrest and delivery were made are obligatory on every State, and a part of the law of every State. But the duty enjoined is several and not joint, and every Governor acts independently and for himself. There can be no joint demand or refusal. In the event of refusal, the State making the demand must submit. There is no alternative. In the case of McGuire no impediment appeared to the Governor of New York, and he properly yielded obedience. The Governor of Connecticut, if applied to, might have rightfully postponed compliance. If advised in season he might have intervened and by a requisition have asserted the claim of Connecticut. It would then have been for the Governor of New York

to decide between the conflicting demands. Whatever the decision, if the proceedings were regular, it would have been conclusive. There could have been no review and no inquiry going behind it."

It thus appears that the language used in *Kentucky v. Dennison* is not unqualified, that an executive officer to whom a requisition is presented may do something more than inquire into the regularity of the record, and that however regular the record there still may be *impediments* of which the executive of whom the demand is made must be the judge. I refer to this case, and to the practice in this and other States, for the purpose of showing that whether my duties be regarded as purely ministerial or *quasi judicial*, I am not only empowered, but required to consider certain extraneous facts not appearing in the record presented to me. . . .

All acts of Congress and all State statutes relating to the surrender of fugitives from justice as between the States are only intended to give effect to section 2 of article 4 of the Constitution of the United States. That section is as follows:

"A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

Now, it is certainly clear that under this provision two circumstances must concur before any person can be lawfully arrested in one State and forcibly sent to another. He must be charged with treason, felony, or other crime, and he must be a *fugitive from justice*. Neither fact is sufficient without the other. It may be admitted that the certificate of the Governor of a State that a party has been charged with crime, when accompanied by a properly authenticated copy of the indictment or affidavit on which the prosecution is based, is conclusive proof of such fact. Under the Constitution the judicial records of each State are entitled to full faith and credit in all the other States. If the records so certified are regular upon their face, the executive of the State to whom the demand is made has clearly no right to go beyond the record and inquire whether the accused is guilty or innocent. The fact that the accused is charged with crime is thus conclusively established. But the second jurisdictional fact still remains to be established.

The Federal Constitution does not prescribe the mode by which

it shall be made to appear that the accused has fled from justice; nor does it in terms declare who shall determine the question. No judicial tribunal is appointed to consider or pass upon the question. It is customary to allege in the requisition that the party named is a fugitive from justice, and to accompany the statement with an affidavit to that effect. But no law requires this course, nor is the legal force of such an affidavit in any way defined. The Governor issuing the requisition must determine that fact for himself in the first instance. It is not at all certain that a prosecution for perjury could be maintained if such affidavit were false. In the absence of any counter evidence such an affidavit would ordinarily be sufficient no doubt, and would be satisfactory to the Governor on whom the demand was made. But is he concluded by such an affidavit? He does not know that it is true. Indeed, he may positively know that it is false. Can it be that as to a matter not established by a judicial record, the Governor on whom the demand is made is bound to accept *prima facie* evidence which he knows to be false, and disregard that which he knows to be true?

After full deliberation I am satisfied that as to the fact of the accused being a fugitive from justice, each Governor must judge for himself. The fact is not determined by any judicial act or record, but is *in pais* purely. Whether a person is charged with crime is another matter provable by records that import absolute verity, and therefore cannot be inquired into. But whether he has fled from the State wherein the charge was made is an open question for the determination of which the law has made no provision in terms.

I, therefore, proceed with regard to this question upon that settled principle, that where the law imposes upon any officer the duty of performing any act upon the happening of any event or the proof made of any fact, and at the same time does not create any tribunal for the determination of the condition precedent, such officer is required to judge for himself. . . .

I think it may be fairly held that the act of leaving the State of Pennsylvania shortly after the date of the alleged homicide was some evidence that Gaffigan and Merrick were fugitives from justice. That circumstance did not raise any very strong presumption, however, as there is no evidence that they concealed their destination or ever attempted to do so. It does not appear that they were ever even charged with the crime before leaving, the

indictment being found in March after they left, and so far as appears, no proceedings were even commenced before any magistrate with a view to their arrest or detention. But granting that the single fact of their leaving the State soon after homicide is sufficient evidence that they were fugitives from justice, did that character always adhere to them?

For nearly fourteen years they have been in frequent and open communication with their friends in the place where the crime is alleged to have been committed. During that long period their residence has been so generally known and so entirely unconcealed that the officers of justice could be ignorant of it only because they made no effort to find it out. I am aware that as against the crime of murder there is no limitation, but that is not the question. Does the character of a fugitive from justice once attaching to a man never leave him under any circumstances? Can he not purge that taint by showing himself for many years to all the world without disguise and allowing the ministers of justice all proper means of knowing his whereabouts and prosecuting him if they so desire? Suppose these men had voluntarily visited the place where the crime is alleged to have been committed, and after remaining there for a time had returned to Illinois, would they still be fugitives from justice? I think not. That character would have been thrown off. And if so, may not the same result arise from many years of publicity, free communication with friends, and the entire absence of concealment? Such a course is, in my opinion, equivalent to a voluntary return.

. . . .

In my opinion Gaffigan and Merrick are no longer fugitives from justice, if they ever were so. Had they concealed themselves, or had there been any difficulty in ascertaining where they were, upon due inquiry by the officers of justice, my conclusion would have been wholly different. But I believe a man may, by long years of good conduct, and by showing himself to the world without concealment, outlive the character of a fugitive from justice, more particularly where the ministers of justice charged with his apprehension practically abandon the charge against him for nearly half the period of human life.

I do not deny that I have carefully considered not only the good character of Gaffigan and Merrick during the last fourteen years, but also the ties which they have formed in this State; I have a duty to perform toward the citizens of Illinois which no

law requires me to overlook. But I have allowed no consideration of private hardship to control my action, believing that my conclusions are warranted by strict law.

Believing, then, that neither positive law nor any considerations founded upon justice require the surrender of the men, I must respectfully refuse to comply with the requisition of the Governor of Pennsylvania. The warrant heretofore issued is revoked and Gaffigan and Merrick ordered to be discharged.

(Signed)

S. M. CULLOM,
Governor.

8. A Collective Naturalization Act

The Fourteenth Amendment provides that "all persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." In the case of *Elk v. Wilkins*, 112 U. S. (1884), 94, the United States Supreme Court decided that Indians in their tribal state were not subject to the jurisdiction of the United States, being rather subject to the tribal authorities, and were therefore not American citizens. In 1924 the following act was passed conferring the rights of citizenship upon them. It is, incidentally, an excellent example of a well-drawn short statute.

SOURCE—43 *U. S. Stat. at Large*, 253.

An Act to authorize the Secretary of the Interior to issue certificates of citizenship to Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise effect the right of any Indian to tribal or other property.

FREDERICK H. GILLET
Speaker of the House of
Representatives.

ALBERT B. CUMMINS
President of the Senate, *pro*
tempore.

Approved, June 2, 1924.
CALVIN COOLIDGE.

9. United States *v.* Wong Kim Ark: Chinese Citizenship Case

The parents of Wong Kim Ark were subjects of the Emperor of China and had entered the United States before Chinese immigration was prohibited. They continued to reside in America, and in 1873 Wong was born in Chinatown in San Francisco. He lived all of his life in the United States, except for two brief visits to China. The first of these was in 1890, and when he returned the same year, he was admitted without question. Four years later he made a longer visit, returning the following year. Although he had not established a residence outside the United States, the collector of customs at the port of San Francisco refused to admit him. It was contended that he was a Chinese coolie, and therefore could not be admitted under the Act of 1888.¹ Wong admitted that he was a Chinese laborer, but argued that since he was born in the United States, he was an American citizen and thus could not be deprived of the right to return to his native country. On these grounds, he applied to the District Court for a writ of habeas corpus which would order the collector to set him free in the United States. The District Court granted the writ, but the attorney for the United States appealed the case to the United States Supreme Court.

SOURCE—United States *v.* Wong Kim Ark., 169 U. S. (1898), 649; 18 S. Ct., 456; 42 L. Ed., 890.

MR. JUSTICE GRAY. . .

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution, "All persons born or naturalized in the United States, and

¹25 U. S. Stat. at Large, 476.

subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

In construing any act of legislation, whether a statute enacted by the legislature, or a constitution established by the people as the supreme law of the land, regard is to be had, not only to all parts of the act itself, and of any former act of the same law-making power, of which the act in question is an amendment; but also to the condition, and to the history, of the law as previously existing, and in the light of which the new act must be read and interpreted. . . .

The fundamental principle of the common law with regard to English nationality was birth within the allegiance, also called “ligealty,” “obedience,” “faith” or “power,” of the King. The principle embraced all persons born within the King’s allegiance and subject to his protection. Such allegiance and protection were mutual—as expressed in the maxim, *protectio trahit subjectionem, et subjectio protectionem*—and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the King’s dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the King.

This fundamental principle, with these qualifications or explanations of it, was clearly, though quaintly, stated in the leading case, known as *Calvin’s Case*, or the *Case of the Postnati*, decided in 1608, after a hearing in the Exchequer Chamber before the Lord Chancellor and all the Judges of England, and reported by Lord Coke and by Lord Ellesmere. *Calvin’s Case*, 7 Rep. 1, 4b-6a, 18a, 18b; Ellesmere, on *Postnati*, 62-64; *S. C.*, 2 Howell’s State Trials, 559, 607, 613-617, 639, 640, 659, 679.

The English authorities ever since are to the like effect. *Co. Lit.* 8a, 128b; Lord Hale, in Hargrave’s Law Tracts, 210, and in 1 Hale P. C. 61, 62; 1 Bl. Com. 366, 369, 370, 374; 4 Bl. Com. 74, 92; Lord Kenyon, in *Doe v. Jones*, 4 T. R. 300, 308; Cockburn on Nationality, 7; Dicey Conflict of Laws, pp. 173-177, 741. . . .

It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the Crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction, of the English Sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign State, or of an alien enemy in hostile occupation of the place where the child was born.

The same rule was in force in all the English Colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the Constitution as originally established. . . .

It was contended by one of the learned counsel for the United States, that the rule of the Roman law, by which the citizenship of the child followed that of the parent, was the true rule of international law, as now recognized in most civilized countries, and had superseded the rule of the common law, depending on birth within the realm, originally founded on feudal considerations.

But at the time of the adoption of the Constitution of the United States in 1789, and long before, it would seem to have been the rule in Europe generally, as it certainly was in France, that, as said by Pothier, "citizens, true and native-born citizens, are those who are born within the extent of the dominion of France," and "mere birth within the realm gives the rights of a native-born citizen, independently of the origin of the father or mother, and of their domicile;" and children born in a foreign country, of a French father who had not established his domicile there nor given up the intention of returning, were also deemed Frenchmen, as Laurent says, by "a favor, a sort of fiction," and Calvo, "by a sort of fiction of extritoriality, considered as born in France, and therefore invested with French nationality." . . . The Code Napoleon of 1807 changed the law of France, and adopted, instead of the rule of country of birth, *jus soli*, the rule of descent or blood, *jus sanguinis*, as the leading principle. . . .

The later modifications of the rule in Europe rest upon the constitutions, laws or ordinances of the various countries, and have no important bearing upon the interpretation and effect of the Constitution of the United States. . . .

There is, therefore, little ground for the theory that, at the time of the adoption of the Fourteenth Amendment of the Constitution of the United States, there was any settled and definite rule of international law, generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion.

Nor can it be doubted that it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.

Both in England and in the United States, indeed, statutes have been passed, at various times, enacting that certain issue born abroad of English subjects, or of American citizens, respectively, should inherit to some extent at least, the rights of their parents. But those statutes applied only to cases coming within their purport; and they have never been considered, in either country, as affecting the citizenship of persons born within its dominion.

...
The first section of the Fourteenth Amendment of the Constitution begins with the words, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." As appears upon the face of the amendment, as well as from the history of the times, this was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in *Dred Scott v. Sandford* (1857) 19 How. 393; and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States. . . . But the opening words, "All persons born," are general, not to say universal, restricted only by place and jurisdiction, and not by color or race—as was clearly recognized in all the opinions delivered in *The Slaughterhouse Cases*, [16 Wall. (U. S. 1873) 36]. . . .

The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, "All persons born in the United

States," by the addition, "and subject to the jurisdiction thereof," would appear to have been to exclude, by the fewest and fittest words, (besides children of members of the Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law,) the two classes of cases—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State—both of which, as has already been shown, by the law of England, and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country. *Calvin's Case*, 7 Rep. 1, 18*b*; Cockburn on Nationality, 7; Dicey Conflict of Laws, 177; *Inglis v. Sailors' Snug Harbor*, 3 Pet. 99, 155; 2 Kent Com. 39, 42. . . .

The foregoing considerations and authorities irresistibly lead us to these conclusions: The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remain within our territory, is yet, in the words of Lord Coke in *Calvin's Case*, 7 Rep. 6*a*, "strong enough to make a natural subject, for if he hath issue here, that issue is a natural-born subject;" and his child, as said by Mr. Binney in his essay before quoted, "if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle." It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides—seeing that, as said by Mr. Webster, when

Secretary of State, in his Report to the President on *Thrasher's Case* in 1851, and since repeated by this court, "independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations." Ex. Doc. H. R. No. 10, 1st sess. 32d Congress, p. 4; 6 Webster's Works, 526; *United States v. Carlisle*,¹ 16 Wall. 147, 155; *Calvin's Case*, 7 Rep. 6a; Ellesmere on Postnati, 63; 1 Hale P. C. 62; 4 Bl. Com. 74, 92. . . .

It is true that Chinese persons born in China cannot be naturalized, like other aliens, by proceedings under the naturalization laws. But this is for want of any statute or treaty authorizing or permitting such naturalization, as will appear by tracing the history of the statutes, treaties and decisions upon that subject—always bearing in mind that statutes enacted by Congress, as well as treaties made by the President and Senate, must yield to the paramount and supreme law of the Constitution. . . .

The power of naturalization, vested in Congress by the Constitution, is a power to confer citizenship, not a power to take it away. . . . Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, *a fortiori* no act or omission of Congress, as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birthright, by virtue of the Constitution itself, without any aid of legislation. The Fourteenth Amendment, while it leaves the power, where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship. . . .

Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. . . .

Order affirmed.

[*Fuller, C. J. and Harlan, J. dissent.*]

¹ The case in the reports is entitled *Carlisle v. United States*.—EDITOR.

10. The Nineteenth Amendment

The "Susan B. Anthony" Amendment¹ providing for equality of suffrage between men and women was long an objective for a large number of civic and women's organizations, but it did not become a part of the Constitution until 1920. As was the case with all other federal amendments, it was proposed by a joint resolution of Congress passed by a two-thirds majority in both Houses. The amendment as thus proposed was then sent to the state legislatures for ratification. Congress did not pass the joint resolution until May, 1919, and by that time most of the state legislatures had adjourned for the biennium. Unless a considerable number of the governors called special sessions for the purpose, there seemed little possibility that the amendment could be ratified in time to permit women to vote in the presidential election of 1920. Many of the governors acceded to the popular demand and special sessions were called. One of the states in which this was done, *i.e.*, Tennessee, was the thirty-sixth to give its assent to the amendment. Here the resolution of ratification was passed without a vote to spare, and then only by a parliamentary stratagem not entirely devoid of dramatic elements. Thereupon, on August 26, 1920, the Secretary of State officially proclaimed the amendment to be part of the Constitution.

The following documents give the ratification resolution of Tennessee and the official proclamation of Secretary Colby. Each of these documents contains the joint resolution of Congress proposing the amendment to the states.

SOURCES—A. Senate Joint Resolution, No. 1. *Tennessee Session Laws*, 1920 (Extraordinary Session), p. 103.

B. 41 *U. S. Stat. at Large*, 1823.

A. Ratification Resolution

A Joint Resolution ratifying a proposed amendment to the Constitution of the United States, providing that the right of citizens of the United States to vote shall not be denied or abridged

¹So-called because it was drafted, in substantially the form in which it was finally passed, by Susan B. Anthony in 1875.

by the United States or by any state on account of sex, and providing further that Congress shall have power to enforce this article by appropriate legislation.

WHEREAS, both Houses of the Sixty-sixth Congress of the United States of America, at its first session, by a constitutional majority of two-thirds thereof, passed a resolution submitting to the several States a proposition to amend the Constitution of the United States, a certified copy of which has been received by the Governor of the State of Tennessee, from the Secretary of State of the United States, as required by law, and by him transmitted to this General Assembly, the same being in the following words, to-wit:

Sixty-sixth Congress of the United States of America.

At the first session.

Begun and held at the City of Washington on Monday, the nineteenth day of May, One Thousand Nine Hundred and Nineteen.

JOINT RESOLUTION

Proposing an amendment to the Constitution extending the right of suffrage to women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States.

Article —

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

“Congress shall have power to enforce this Article by appropriate legislation.”

F. H. GILLETTE,

Speaker of the House of Representatives.

THOS. R. MARSHALL,

Vice President of the United States and President of the Senate.

Be it resolved by the Senate of the State of Tennessee, the House of Representatives concurring, That said proposed amendment to the Constitution of the United States of America be and

the same is hereby ratified by the General Assembly of the State of Tennessee.

Be it further resolved, That certified copies of the foregoing preamble and joint resolution be forwarded by the Governor of the State of Tennessee to the President of the United States, to the Secretary of the State of the United States at Washington, District of Columbia, to the President of the Senate of the United States, and to the Speaker of the House of Representatives of the United States.

Adopted August 18, 1920.

ANDREW L. TODD,
Speaker of the Senate.

W. M. CARTER,
Speaker of the House of Representatives.

B. *Proclamation of the Secretary of State*

BAINBRIDGE COLBY,
SECRETARY OF STATE OF THE UNITED STATES OF AMERICA.

TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING:

KNOW YE, That the Congress of the United States at the first session, sixty-sixth Congress begun at Washington on the nineteenth day of May in the year one thousand nine hundred and nineteen, passed a Resolution as follows: to wit—

JOINT RESOLUTION

Proposing an amendment to the Constitution extending the right of suffrage to women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States.

“Article —.

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

“Congress shall have power to enforce this article by appropriate legislation.”

And, further, that it appears from official documents on file in the Department of State that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitute three-fourths of the whole number of States in the United States.

NOW, therefore, be it known that I, Bainbridge Colby, Secretary of State of the United States, by virtue and in pursuance of Section 205 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this 26th day of August, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.]

BAINBRIDGE COLBY.

II. Proposed Amendments to the Constitution of the United States

A large number of proposals for amendments are presented at almost every session of Congress. Many of these get no further than a committee pigeon-hole, but a few secure extensive committee hearings, and one or two are usually reported to the House or Senate for further consideration. During the Sixty-eighth Congress (Dec. 3, 1923, to Mar. 4, 1925) a number of unusually important amendments were presented. Some of these are given in

the following pages. They illustrate the nature of the current proposals for changing the fundamental law of the United States, as well as the steps through which each amendment must go. Some of the following proposals failed to leave the hands of the committees to which they were first referred; one was reported out of committee with amendments; another passed the Senate, but was still in the hands of the House committee when the session ended; and one passed both houses of Congress and is now before the states for ratification.

- SOURCES**—A. Child Labor Amendment. 43 *U. S. Stat. at Large*, 670.
- B. Amendment Changing the Sessions of Congress. *Senate Joint Resolution, 22*, 1st Session, 68th Congress, as amended by the House Committee on Election of the President. Furnished through the courtesy of Senator George W. Norris and Hon. H. B. White.
- C. Uniform Marriage and Divorce Amendment. *Senate Joint Resolution, 5*, and *House Joint Resolution, 6*, 1st Session, 68th Congress. Furnished through the courtesy of Senator Arthur Capper and Hon. L. W. Fairfield.
- D. Equal Rights Amendment. *Senate Joint Resolution, 21*, and *House Joint Resolution, 75*, 1st Session, 68th Congress. Furnished through the courtesy of Senator Charles Curtis and Hon. D. R. Anthony, Jr.
- E. Amendment to the Amendment Article. *Senate Joint Resolution, 109*, 1st Session, 68th Congress. Furnished through the courtesy of Senator James W. Wadsworth.
- F. Amendment Prohibiting the Issuance of Tax-exempt Securities. *House Joint Resolution, 315*. Furnished through the courtesy of Hon. W. R. Green.

A. Child Labor Amendment.¹

“SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

“SECTION 2. The power of the several States is unimpaired

¹This amendment passed each house of Congress by a two-thirds vote and was deposited in the Department of State, June 4, 1924.

It has been ratified (March, 1925) by legislative action in the following states: Arkansas, Arizona, California, Wisconsin.

Both houses of the state legislature have rejected it in the following states: Connecticut, Delaware, Florida, Georgia, Indiana, Kansas, Maine, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia.

One house of the state legislature has rejected it in the following states: Idaho, Louisiana, Michigan, Nevada, North Dakota, Ohio, Oklahoma, Oregon.

Information furnished through the courtesy of Agnes E. Benedict, Research Department, National Child Labor Committee.

by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

B. Amendment Changing the Sessions of Congress.¹

"SECTION 1. The terms of the President and Vice President shall end at noon on the twenty-fourth day of January, and the terms of Senators and Representatives at noon on the fourth day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

"SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall be on the fourth day of January, unless they shall by law appoint a different day.

"SECTION 3. If the House of Representatives has not chosen a President, whenever the right of choice devolves upon them, before the time fixed for the beginning of his term, then the Vice President chosen for the same term shall act as President until the House of Representatives chooses a President; and the Congress may by law provide for the case where the Vice President has not been chosen before the time fixed for the beginning of his term, declaring what officer shall then act as President, and such officer shall act accordingly until the House of Representatives chooses a President, or until the Senate chooses a Vice President.

"SECTION 4. Sections 1 and 2 shall take effect on the thirtieth day of November following the ratification of this article."

C. Uniform Marriage and Divorce Amendment.²

"The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce,

¹ A similar amendment to the one here given was introduced by Senator Norris. It passed the Senate by a two-thirds vote on March 14, 1924, and the House of Representatives referred it to the Committee on Election of the President. This committee reported the amendment here given as a substitute for the Senate resolution. In part this substitute was accepted by Senator Norris, but it never came to a vote due to the pressure of other business.

² This amendment was introduced in identical form by Senator Capper and Mr. Fairfield in the first Session of the 68th Congress. Neither resolution has been reported out of committee, but on January 11, 1924, the sub-committee of the Senate Committee on the Judiciary held a hearing on it.

the legitimation of children, and the care and custody of children affected by annulment of marriage or by divorce."

D. *Equal Rights Amendment.*¹

"Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.

"Congress shall have power to enforce this article by appropriate legislation."

E. *Amendment to the Amendment Article.*²

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, upon the application of two-thirds of the legislatures of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as a part of this Constitution when ratified by three-fourths of the several States either through their conventions elected by the people for that purpose or through the direct vote of their people at elections to be held under the authority of the respective States, reserving also to the States respectively the selection of either mode of ratification, and the authentication of the action taken, and until three-fourths of the States shall have ratified or more than one-fourth of the States shall have rejected a proposed amendment, any State may by the same mode selected change its vote: *Provided*, That if at any time more than one-fourth of the States have rejected the proposed amendment, said rejection shall be final and further consideration thereof by the States shall cease: *Provided further*, That any amendment proposed hereunder shall be inoperative unless it shall have been ratified as an amendment to the Constitution as provided in the Constitution within eight years from the date of submission thereof to the States by the Congress: *Provided further*, That no State, without its consent, shall be deprived of its equal suffrage in the Senate."

¹ This amendment was introduced in identical form by Senator Curtis and Mr. Anthony in the first Session of the 68th Congress. Neither resolution has been reported out of committee.

² This amendment was introduced in somewhat different form by Senator Wadsworth on December 6, 1923. It was referred to the Committee on Judiciary and was reported with amendments. Senator Wadsworth then introduced the resolution here given as a substitute to cover the amendments proposed to the original.

F. *Amendment Prohibiting the Issuance of Tax-exempt Securities.*¹

“SECTION 1. The United States shall have power to lay and collect taxes on income derived from securities issued after the ratification of this article by or under the authority of any State, but without discrimination against income derived from such securities and in favor of income derived from securities issued after the ratification of this article by or under the authority of the United States or any other State.

“SECTION 2. Each State shall have power to lay and collect taxes on income derived by its residents from securities issued after the ratification of this article by or under the authority of the United States, but without discrimination against income derived from such securities and in favor of income derived from securities issued after the ratification of this article by or under the authority of such State.”

¹ This amendment was introduced into the House of Representatives on January 3, 1925, by Mr. Green, and was referred to the Committee on Ways and Means. It was not reported during the sessions of the 68th Congress.

PART II

THE NATIONAL GOVERNMENT

12. The Presidential Succession Act of 1886

THE Constitution provides that the Vice-President shall assume the duties of the chief executive if that official dies, resigns, is removed, or for any other reason is unable to serve; but it was left to Congress to provide for the contingency that would arise if both the President and Vice-President were unable to serve. As early as 1792 Congress recognized the need of legislation in this respect and enacted that the succession should pass, in order, to the President *pro tempore* of the Senate and the Speaker of the House of Representatives. It was soon evident that this arrangement was not the best; but the dramatic incidents of 1880-90 were required to bring its defects clearly home to the people.

In the autumn of 1881, before Congress had met, and therefore before a President *pro-tempore* of the Senate or a Speaker of the House could be elected, President Garfield was assassinated and the duties of the office were assumed by Vice-President Arthur. Again, in 1885 Vice-President Hendricks died before the convening of Congress, and hence before a successor to the presidency could be named. Had Vice-President Arthur or President Cleveland died before Congress assembled, the country would have been without a legally chosen chief executive. Indeed, had President Cleveland died after Congress convened, he would have been succeeded by a man of a different party, since the Senate was Republican. This would have meant a reversal of executive policy, dictated by mere chance. With a view to preventing the recurrence of risks like these, Congress, in 1886, passed the Presidential Succession Act, still in effect, and quoted below:

SOURCE—24 *U. S. Stat. at Large*, 1.

An act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice-President.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting.

SEC. 2. That the preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the officers therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.

SEC. 3. That sections one hundred and forty-six, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, and one hundred and fifty of the Revised Statutes are hereby repealed.

Approved, January 19, 1886.

13. Call for a Republican National Convention (1924)

The Republican National Committee met in Washington, D. C., December 12, 1923, to make formal arrangements for the convention to be held six months later. After having accepted the invitation of Cleveland, Ohio, to meet there, the Committee issued the formal call for the election of delegates. The call for the national convention is, first of all, a signal for the opening of the presidential primary campaigns. Political fence-building and wire-pulling have usually been in progress for several months, but the embers of ambition which heretofore have been kept carefully covered now suddenly burst into full blaze. One after another, aspirants for the presidential nomination of the party openly declare themselves contestants, and the presidential campaign starts in earnest.

But the call for the convention is more than the starting pistol of the presidential race; it frequently determines the conditions under which the race will be run. The number of delegates to be allotted to each state, the rules under which they will be chosen, the method of settling contests for seats, and even the manner by which the temporary roll of the convention is to be made up, may be set forth in the document. The Call for the Republican National Convention of 1924 is unusually important, for it specified a departure from the methods of apportionment laid down by the two preceding conventions and gave the southern states a considerable increase in representation. Although this feature evoked much criticism at the time, no serious attempt was made to have the convention provide a different apportionment for 1928.

SOURCE—G. L. Hart (Reporter), *Official Report of the Proceedings of the Eighteenth Republican National Convention Held in Cleveland, Ohio, June 10, 11, and 12, 1924* (New York, 1924), 10-15.

To the Republican Voters of the United States:

In pursuance of the rules adopted by the Republican National Convention of 1920, the Republican National Committee directs

that a National Convention of delegated representatives of the Republican Party be held in the City of Cleveland, in the State of Ohio, at eleven o'clock, a.m., on Tuesday, the 10th day of June, 1924, for the purpose of nominating candidates for President and Vice-President, to be voted for at the Presidential Election on Tuesday, November 4, 1924, and for the transaction of such other business as may properly come before it.

The voters of the several States and of Alaska, Hawaii, Porto Rico, the Philippine Islands and the District of Columbia who are in accord with the principles of the Republican Party, believe in its declaration of policies, and are in sympathy with its aims and purposes, are cordially invited to unite under this call in the selection of Delegates to said Convention.

Said National Convention shall consist of

(a) *Delegates at Large*

1. Four Delegates-at-Large from each State.
2. Two additional Delegates-at-Large for each Representative-at-large in Congress from each State.
3. Two Delegates-at-Large each for Alaska, District of Columbia, Porto Rico, Hawaii, and the Philippine Islands.
4. Three additional Delegates-at-Large from each State casting its electoral vote, or a majority thereof, for the Republican nominee for President in the last preceding Presidential election.

(b) *District Delegates*

1. One District Delegate from each Congressional District.
2. One additional District Delegate from each Congressional District casting 10,000 votes or more for any Republican elector in the last preceding Presidential election or for the Republican nominee for Congress in the last preceding Congressional election.

(c) *Alternate Delegates*

One Alternate Delegate to each Delegate to the National Convention.

DELEGATES SHALL BE ELECTED UNDER THE FOLLOWING RULES:

First: Only legal and qualified voters shall participate in a Republican primary, caucus, mass meeting, or mass convention, held for the purpose of selecting delegates to be elected as dele-

gates to County, District or State Convention, and only such legal and qualified voters shall be elected as delegates to County, District and State Conventions.

Second: State and District Conventions shall be composed of delegates who are legal and qualified voters. Such delegates shall be apportioned among the counties, parishes and cities of the State or District, having regard to the Republican vote therein.

Third: Delegates and Alternates to the National Convention shall be duly qualified voters of their respective States and Territories, and in the case of the District of Columbia, residents therein.

Delegates-at-Large and their Alternates, and Delegates from Congressional Districts and their Alternates, shall be elected in the following manner:

(1) By primary election, in accordance with the laws of the State in which the election occurs, in such States as require by law the election of Delegates to National Convention of political parties by direct primaries; provided, that in any State in which Republican representation upon the board of judges or inspectors of elections for such primary election is denied by law, Delegates and Alternates shall be elected as hereinafter provided.

(2) By Congressional or State Conventions, as the case may be, to be called by the Congressional or State Committees, respectively. Notice of the call for any such convention shall be published in a newspaper or newspapers of general circulation in the District or State, as the case may be, not less than fifteen days prior to date of said Convention.

(3) Provided, however, that in selecting Delegates and Alternates to the National Convention, no State law shall be observed which hinders abridges or denies to any citizen of the United States eligible under the United States Constitution to the office of President or Vice-President the right or privilege of being a candidate under such state law for the nomination for President or Vice-President; or which authorizes the election of a number of Delegates or Alternates from any State to the National Convention different from that fixed in this call.

In a Congressional District where there is no Republican Congressional Committee, the Republican State Committee shall issue the call and make said publication.

All Delegates from any State may, however, be chosen from

the State at large, in the event that the laws of the State in which the election occurs so provide.

Alternate Delegates shall be elected to said National Convention for each unit of representation equal in number to the number of Delegates elected therein and shall be chosen in the same manner and at the same time the Delegates are chosen; provided, however, that if the law of any State shall prescribe the method of choosing Alternates, they shall be chosen in accordance with the provisions of the law of the State in which the election occurs.

The election of Delegates and Alternates from Alaska, Hawaii, Porto Rico, the Philippine Islands and the District of Columbia shall be held under the direction of the respective recognized Republican Central Committee or governing committee therein, in conformity with the resolution this date adopted by the National Committee, copies of which resolution will be furnished to the governing committee of the Republican Party in each of such units of representation by the Secretary of the National Committee.

All Delegates or Alternates shall be elected not earlier than thirty days after the date of this call and not later than thirty days before the date of the meeting of said Republican National Convention unless otherwise provided by the laws of the State in which the election occurs.

No Delegates or Alternates shall be deemed eligible to participate in any convention to elect Delegates to said National Convention who were elected prior to the date of this call.

The credentials of each Delegate and Alternate elected must be forwarded to the Secretary of the Republican National Committee at the office of the National Committee, Munsey Building, Washington, D. C., at least twenty days before the said 10th day of June, 1924, for use in making up the temporary roll of the Convention; except in the case of Delegates or Alternates elected at a time or times in accordance with the laws of the State in which the election occurs, rendering impossible the filing of credentials within the time above specified.

All notices of contests shall be forwarded in the same manner and within the same time limit. When more than the authorized number of Delegates or Alternates from any State, Territory or Territorial possession are reported to the Secretary of the National Committee, a contest shall be deemed to exist and the Secretary shall notify the several claimants so reported and shall

submit all such credentials and claims to the whole Committee for decision as to which claimants reported shall be placed on the temporary roll of the Convention; provided, however, that the names of Delegates and Alternates presenting certificates of election from the canvassing board or officer created or designated by the law of the State in which the election occurs, to canvass the returns and issue certificates of election to Delegates to National Conventions of political parties in a primary election, shall be placed upon the temporary roll of the Convention by the National Committee.

All notices of contests shall be submitted in writing, accompanied by a printed statement setting forth the ground of the contests, and must be filed with the Secretary of the National Committee at least twenty days prior to the meeting of the National Convention, except in the case of Delegates or Alternates elected at a time or times in accordance with the laws of the State in which the election occurs, rendering impossible the filing of notices of contests within the time above specified.

The Secretary of the Republican National Committee is directed to promulgate this call by sending a copy thereof to the member of the National Committee from each State, Territory, Territorial Possession and the District of Columbia, and to inclose therewith copies of the call for the Chairman and Secretary of the State Central Committee or governing committee of the party therein to be forwarded to said Chairman and Secretary by the member of the National Committee.¹

JOHN T. ADAMS,
Chairman.

GEORGE B. LOCKWOOD,
Secretary.

Washington, D. C.
December 12, 1923.

14. Counting the Electoral Vote

The electoral college never meets as a body in Washington. The Constitution provides that "the electors shall meet in their respective states," and in most cases this meeting is held in the state capital. By act of 1887 Congress provided that the electors shall meet on the second

¹ Tabular statement of apportionment omitted.—EDITOR.

Monday of the January following their election. The ballots which they sign at that time are then transmitted to the president of the Senate. Congress, by concurrent resolution, thereupon indicates a day (custom has fixed the second Wednesday of February) on which the ballots shall be officially counted. The following extracts from the *Congressional Record* show how this resolution is passed by the House of Representatives and the way in which the count is conducted. It should be noted that the business of Congress is only temporarily interrupted for this purpose and is not suspended an entire day.

SOURCES—A. *Congressional Record*, 68th Cong., 2nd Sess., Vol. LXVI, pp. 2050-2051.

B. *Ibid.*, pp. 3549 and 3554.

C. *Ibid.*, pp. 3573-3574.

A. *House of Representatives*, January 16, 1925.

Mr. WHITE of Kansas. Mr. Speaker, I ask unanimous consent to call up for present consideration Senate Concurrent Resolution 25, relating to the election of the President and Vice President of the United States.

The SPEAKER. The gentleman from Kansas asks unanimous consent to call up for immediate consideration at this time Senate Concurrent Resolution 25, which the Clerk will report.

The Clerk read as follows:

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress shall assemble in the Hall of the House of Representatives on Wednesday, the 11th day of February, 1925, at 1 o'clock p. m., pursuant to the requirements of the Constitution and laws relating to the election of President and Vice President of the United States, and the President pro tempore of the Senate shall be their presiding officer; that two tellers shall be previously appointed by the President pro tempore of the Senate and two by the Speaker on the part of the House of Representatives, to whom shall be handed as they are opened by the President of the Senate all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter "A"; and said tellers, having then read the same in the presence

and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in manner and according to the rules by law provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses.

The SPEAKER. Is there objection?

Mr. CONNALLY of Texas. Mr. Speaker, reserving the right to object, what is the necessity for pushing this through at this time?

Mr. WHITE of Kansas. It is a privileged resolution. There is no special rush. It was reported to the House yesterday.

Mr. CONNALLY of Texas. Has the gentleman consulted with the gentleman from Tennessee [Mr. GARRETT] about the matter?

Mr. WHITE of Kansas. I did.

Mr. CONNALLY of Texas. And he had no objection?

Mr. WHITE of Kansas. He had no objection. I expected Mr. GARRETT to be here and also the ranking minority member of the committee.

Mr. CONNALLY of Texas. The reason I asked the gentleman the question is that I understood the gentleman from Tennessee objected to it the other day.

Mr. WHITE of Kansas. No; the gentleman from Tennessee did not object the other day.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

B. Senate, February 11, 1925.

Mr. CURTIS. Mr. President, I desire to submit a privileged motion.

I move that five minutes before 1 o'clock to-day the Senate proceed to the Hall of the House of Representatives, there to take part under the Constitution and laws in the count of the electoral votes for President and Vice President of the United States.

The motion was agreed to. . . .

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ball	Fletcher	McKinley	Shortridge
Bayard	Frazier	McLean	Simmons
Bingham	George	McNary	Smith
Borah	Glass	Mayfield	Smoot
Brookhart	Gooding	Means	Spencer
Bruce	Greene	Metcalf	Stanfield
Bursum	Hale	Moses	Stanley
Cameron	Harreld	Neely	Sterling
Capper	Harris	Norbeck	Swanson
Copeland	Heflin	Oddie	Trammell
Couzens	Howell	Overman	Underwood
Cummins	Johnson, Minn.	Pepper	Wadsworth
Curtis	Jones, N. Mex.	Phipps	Walsh, Mass.
Dale	Jones, Wash.	Pittman	Walsh, Mont.
Dial	Kendrick	Ransdell	Warren
Dill	Keyes	Reed, Mo.	Watson
Edwards	King	Reed, Pa.	Weller
Fernald	Ladd	Robinson	Wheeler
Ferris	Lenroot	Sheppard	Willis
Fess	McKellar	Shipstead	

The PRESIDENT pro tempore. Seventy-nine Senators have answered to their names. There is a quorum present.

Senators, pursuant to law, and under the order of the Senate, the Senate will now proceed to the Hall of the House of Representatives for the purpose of counting the electoral vote for President and Vice President of the United States. At the conclusion of the joint session the Senate will return to its Chamber, whereupon the report of the tellers will be made to the Senate, and the Senate will then resume its regular business. It should be understood that this is not an adjournment.

Thereupon (at 12 o'clock and 55 minutes p. m.) the Senate, preceded by the President pro tempore, the Secretary, and the Sergeant at Arms, proceeded to the Hall of the House of Representatives for the purpose of participating in the count of the electoral vote for President and Vice President of the United States.

C. House of Representatives, February 11, 1925.

At 1 o'clock p. m., the Doorkeeper announced the President pro tempore and the Senate of the United States.

The Senate entered the Hall, preceded by their Sergeant at Arms and headed by the President pro tempore and the Secretary of the Senate, the Members and officers of the House rising to receive them.

The PRESIDENT pro tempore took his seat as the presiding officer of the joint convention of the two Houses, the Speaker of the House occupying the chair on his left.

The PRESIDENT pro tempore. Gentlemen of the Congress, the two Houses of Congress, pursuant to the requirements of the Constitution and the laws of the United States, are now in joint session for the purpose of opening the certificates and ascertaining and counting the votes of the electors of the several States for President and Vice President. Under well-settled precedents the reading of the formal portion of the certificates which have been presented to the President of the Senate will be dispensed with unless demand therefor shall be made. After it is ascertained that the certificate[s] are authentic and correct in form, the tellers will count and make a list of the votes cast by the electors of the several States.

The Chair is but repeating an observation made years ago by a distinguished Vice President of the United States, and renewed since that time until it has become traditionary for these cases, when it suggests that there should be no manifestation of approval or disapproval on the part of the galleries or on the part of the Members of the joint session as the counting proceeds, inasmuch as that distinguished Vice President said, as we are engaged in a solemn and important duty imposed upon us by the Constitution of the United States, and that it should be discharged with dignity and in silence.

The tellers heretofore appointed will take their places at the desk.

The tellers took their places at the desk.

The PRESIDENT pro tempore. The Chair hands to the tellers the certificate of the electors for President and Vice President of the State of Alabama, and they will count and make a list of the votes cast by that State.

Mr. JEFFERS (one of the tellers). Mr. President, the certificate of the electoral vote of the State of Alabama seems to be regular in form and authentic, and it appears therefrom that John W. Davis, of the State of West Virginia, received 12 votes for President, and Charles W. Bryan, of the State of Nebraska, received 12 votes for Vice President.

The PRESIDENT pro tempore. If there be no objection the Chair will omit in the further procedure the formal statement just made, and will open in alphabetical order the certificates showing the

votes of the electors in each State, and the tellers will read, count, and announce the result in each State as was done with respect to the State of Alabama.

There was no objection.

The tellers then proceeded to read, count, and announce, as was done in the case of Alabama, the electoral votes of the several States in an alphabetical order.

The PRESIDENT pro tempore. Gentlemen of the Congress, the certificates of all the States have now been opened and read and the tellers will make final ascertainment of the result and deliver the same to the President pro tempore of the Senate.

The tellers delivered to the President pro tempore of the Senate the following statement of the result:

The undersigned, SELDEN P. SPENCER and WILLIAM H. KING, tellers on the part of the Senate, and HAYS B. WHITE and LAMAR JEFFERS, tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice President of the United States for the term beginning on the 4th day of March, 1925:

Electoral votes of each State	States	For President			For Vice President		
		Calvin Coolidge, of Massachusetts	John W. Davis, of West Virginia.	Robert M. La Follette, of Wisconsin	Charles G. Dawes, of Illinois	Charles W. Bryan, of Nebraska	Burton K. Wheeler, of Montana
12	Alabama.....	.....	12	.....	.....	12	.....
3	Arizona.....	3	.....	.....	3	.....	.....
9	Arkansas.....	.....	9	.....	.....	9	.....
13	California.....	13	.....	.....	13	.....	.....
6	Colorado.....	6	.....	.....	6	.....	.....
7	Connecticut.....	7	.....	.....	7	.....	.....
3	Delaware.....	3	.....	.....	3	.....	.....
6	Florida.....	.....	6	.....	.....	6	.....
14	Georgia.....	.....	14	.....	.....	14	.....
4	Idaho.....	4	.....	.....	4	.....	.....
29	Illinois.....	29	.....	.....	29	.....	.....
15	Indiana.....	15	.....	.....	15	.....	.....
13	Iowa.....	13	.....	.....	13	.....	.....
10	Kansas.....	10	.....	.....	10	.....	.....

Electoral votes of each State	States	For President			For Vice President		
		Calvin Coolidge, of Massachusetts	John W. Davis, of West Virginia	Robert M. La Follette, of Wisconsin	Charles G. Dawes, of Illinois	Charles W. Bryan, of Nebraska	Burton K. Wheeler, of Montana
13	Kentucky.....	13			13		
10	Louisiana.....		10			10	
6	Maine.....	6			6		
8	Maryland.....	8			8		
18	Massachusetts.....	18			18		
15	Michigan.....	15			15		
12	Minnesota.....	12			12		
10	Mississippi.....		10			10	
18	Missouri.....	18			18		
4	Montana.....	4			4		
8	Nebraska.....	8			8		
3	Nevada.....	3			3		
4	New Hampshire.....	4			4		
14	New Jersey.....	14			14		
3	New Mexico.....	3			3		
45	New York.....	45			45		
12	North Carolina.....		12			12	
5	North Dakota.....	5			5		
24	Ohio.....	24			24		
10	Oklahoma.....		10			10	
5	Oregon.....	5			5		
38	Pennsylvania.....	38			38		
5	Rhode Island.....	5			5		
9	South Carolina.....		9			9	
5	South Dakota.....	5			5		
12	Tennessee.....		12			12	
20	Texas.....		20			20	
4	Utah.....	4			4		
4	Vermont.....	4			4		
12	Virginia.....		12			12	
7	Washington.....	7			7		
8	West Virginia.....	8			8		
13	Wisconsin.....			13			13
3	Wyoming.....	3			3		
531		382	136	13	382	136	13

SELDEN P. SPENCER,

WM. H. KING,

Tellers on the part of the Senate.

HAYS B. WHITE,

LAMAR JEFFERS,

Tellers on the part of the House of Representatives

The PRESIDENT pro tempore. Gentlemen of the Congress, the report of the tellers of the votes cast by the electors in all the States as delivered to the President pro tempore of the Senate is as follows:

The state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for President of the United States is 531, of which a majority is 266.

Calvin Coolidge, of the State of Massachusetts, has received for President of the United States 382 votes.

John W. Davis, of the State of West Virginia, has received 136 votes.

Robert M. La Follette, of the State of Wisconsin, has received 13 votes.

The state of the vote for Vice President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of the electors appointed to vote for Vice President of the United States is 531, of which a majority is 266.

Charles G. Dawes, of the State of Illinois, has received for Vice President of the United States 382 votes.

Charles W. Bryan, of the State of Nebraska, has received 136 votes.

Burton K. Wheeler, of the State of Montana, has received 13 votes.

The announcement of the state of the vote by the President pro tempore of the Senate, just made, is, under the Constitution and laws of the United States, deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the 4th day of March, 1925, and will be entered, together with a list of the votes so cast and ascertained, on the Journals of the Senate and the House of Representatives.

Gentlemen of the joint session, the purpose of this meeting having been accomplished, the joint session is now dissolved and the Senators will return to the Senate Chamber.

The Senate (at 1 o'clock and 40 minutes p. m.) retired from the Hall, and (at 1 o'clock and 45 minutes p. m.) the Speaker resumed the chair and called the House to order.

PACIFIC COMMISSARY CO.

Mr. STRONG of Kansas. Mr. Speaker, I present a conference report on the bill S. 2357 and ask that the same be printed in the RECORD under the rule.

The SPEAKER. The Clerk will report the bill by title.

The Clerk read as follows:

S. 2357. An act for the relief of the Pacific Commissary Co.

The SPEAKER. Ordered printed under the rule.

The conference report is as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two houses on the amendments of the House to the bill S. 2357, an act for the relief of the Pacific Commissary Co., having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House and agree to the same with an amendment as follows: In lieu of the sum proposed insert “\$10,841.73 out of any money in the Treasury not otherwise appropriated”; and the House agree to the same.

JAMES G. STRONG,

ARTHUR B. WILLIAMS,

CHARLES F. X. O'BRIEN,

Managers on the part of the House.

ARTHUR CAPPER,

ROBT. N. STANFIELD,

THOMAS F. BAYARD,

Managers on the part of the Senate.

MILK BILL, DISTRICT OF COLUMBIA

Mr. ZIHLMAN. Mr. Speaker, I ask to take from the Speaker's table the bill S. 2803 to insist on the House amendments, and to agree to the conference asked for by the Senate.

The SPEAKER. The gentleman from Maryland asks to take from the Speaker's table, to insist on the House amendments, and to agree to the conference asked by the Senate on the bill which the Clerk will report by title.

The Clerk read as follows:

An act (S. 2803) to regulate within the District of Columbia the sale of milk, cream, and ice cream, and for other purposes.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The Clerk will announce the conferees.

The Clerk read as follows:

Mr. REED of West Virginia, Mr. LAMPERT, and Mr. BLANTON.

15. The President's Calendar

A considerable portion of the time of the President is of necessity consumed by conferences of one sort or another. These vary widely in character and importance, as the following list of the engagements of President Coolidge over a period of three days will show. It is quite true, however, as Mr. Clark has pointed out, that "it is only fair to say that the daily calendar is far from representative of the great variety of his engagements and duties. Recently, we have tried hard to crowd all of his callers into the hours before lunch. This leaves his afternoon apparently free, so far as engagements are concerned; but, in fact, the afternoon and evening become his most productive working hours. These are devoted to the enormous amount of reading, studying and writing, which his position makes so necessary."

SOURCE—Statements of Mr. E. T. Clark, Acting Secretary to President Coolidge, Feb. 4, 1925.

The President's Engagements

Monday, January 5, 1925.

11:00 a.m. Representative Parker, N. Y.

11:45 a.m. Mr. Harry Wardman.

12:00 noon Delegation Infantry Corps Old Guard State Fencibles, Phila., to present certificate of honorary membership.

12:15 p.m. Senator McCormick to introduce Mrs. Nancy McCormick.

12:30 p.m. Receive and say word of welcome to delegates Nat. Coöperative Marketing Conference, Walton Peteet, Secretary.

Tuesday, January 6, 1925.

- 10:00 a. m. Senator Phipps.
- 10:15 a. m. Senator McKinley.
- 10:20 a. m. Secretary Mellon, Senator Pepper, and Senator Reed.
- 10:30 a. m. CABINET.
- 12:00 noon Washington Correspondents.
- 12:15 p. m. Mr. Wayne B. Wheeler.

Wednesday, January 7, 1925.

- 10:00 a. m. Rep. McLaughlin, Michigan.
- 10:15 a. m. Mr. Elmer Landes and Mr. Quamme.
- 10:30 a. m. Mr. Eugene Meyer, Jr., and Mr. John Sparks, of Texas.
- 10:45 a. m. Mr. Drummond, Inland Waterways Ass'n.
- 11:00 a. m. Rep. Hoch, Kansas.
- 11:15 a. m. Hon. Frank W. Mondell.
- 11:30 a. m. Mr. Wm. F. Whiting, Holyoke, Mass.
- 11:45 a. m. General Hines, Veterans' Bureau.
- 12:00 noon R. C. Bonham, President Jersey City Stock Yards Co.
- 12:15 p. m. Miss Charl Williams.
- 12:30 p. m. Officers and Delegates World Association Daily Vacation Bible Schools—30 or 40.

16. Recognition of Panama

The United States had long been interested in the proposal for an interoceanic canal across the Isthmus of Panama. In order to preclude British control of such a project, the Clayton-Bulwer Treaty (1850) was negotiated, stipulating that neither this country nor Great Britain "would ever obtain or maintain for itself any exclusive control" over the proposed waterway. Toward the end of the century a number of attempts were made by the United States to secure a revision of this treaty, but each ended in failure. The Spanish-American War led to strong feeling in the country that the canal ought to be built without further delay, and to this end Secretary Hay renewed the

efforts to secure a removal of the restrictions of 1850. This time the British government was more open to argument, and in 1901 a treaty was negotiated which removed all British obstacles to an American built canal.

A second difficulty was encountered in the French company which had started a canal many years before, and which still held the rights to the most favorable route through Panama. After prolonged bickering, this company agreed to sell its rights for forty million dollars, and it remained only to secure Colombian consent to American control of the prospective canal zone. Early in 1903 Mr. Hay negotiated a treaty providing for this. But the Colombian Congress failed to ratify it, partly because the members felt that a higher price might be secured for the concession. This delay was very irritating, and President Roosevelt seemed to countenance forcible action if Colombia continued to obstruct the interests of "collective civilization."

The inhabitants of Panama were equally desirous of clearing the way for American construction of the canal, for they feared that a route through Nicaragua would be selected if there were further delays. Consequently, with American naval vessels and marines at hand to prevent Colombian troops from interfering, a quick and bloodless revolution was staged and the Panamaians declared themselves an independent state. A few days later Philippe Bunau-Varilla (the agent of the French canal company) was appointed minister from Panama to the United States. The following documents show how our recognition of the independence of Panama was finally effected.

SOURCE—*Papers relating to the Foreign Affairs of the United States, 1903* (Washington, 1904), pp. 245-246.

LEGATION OF THE REPUBLIC OF PANAMA,¹

Washington, November 11, 1903.

MR. SECRETARY OF STATE: I have the very great honor to bring to your knowledge the fact that the Republic of Panama has

¹ The original was in Spanish.—EDITOR.

designated me to fill, near the Government of the United States of America, the post of envoy extraordinary and minister plenipotentiary with full powers to negotiate.

While begging you, Mr. Secretary of State, to transmit to His Excellency the President of the Republic of the United States the substance of the present communication, I venture to ask you to solicit from his kindness the appointment of a date on which he will authorize me to present to him my letters of credence.

I have, etc.,

P. BUNAU-VARILLA.

DEPARTMENT OF STATE,
Washington, November 12, 1903.

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, in which you advise me that the Republic of Panama has appointed you to fill, near this Government, the post of envoy extraordinary and minister plenipotentiary, with full powers to negotiate.

You further ask that this information may be communicated to the President and that he will kindly fix a date at which you may present your letters of credence.

In reply I have the honor to say that the President will be pleased to receive you for the purpose mentioned to-morrow, Friday, at 9.30 a. m.

If you will be good enough to call at this Department shortly before the hour mentioned, the Secretary of State will be pleased to accompany you to the White House.

Accept, etc.,

FRANCIS B. LOOMIS,
Acting Secretary of State.

When Mr. Bunau-Varilla was presented at the White House the following day, President Roosevelt made the following remarks:

MR. MINISTER: I am much gratified to receive the letters whereby you are accredited to the Government of the United States in the capacity of envoy extraordinary and minister plenipotentiary of the Republic of Panama.

In accordance with its long-established rule, this Government has taken cognizance of the act of the ancient territory of Panama in reasserting the right of self-control and, seeing in the recent

events on the Isthmus an unopposed expression of the will of the people of Panama and the confirmation of their declared independence by the institution of a *de facto* government, republican in form and spirit, and alike able and resolved to discharge the obligations pertaining to sovereignty, we have entered into relations with the new Republic. It is fitting that we should do so now, as we did nearly a century ago when the Latin peoples of America proclaimed the right of popular government, and it is equally fitting that the United States should, now as then, be the first to stretch out the hand of fellowship and to observe toward the new-born State the rules of equal intercourse that regulate the relations of sovereignties toward one another.

I feel that I express the wish of my countrymen in assuring you, and through you the people of the Republic of Panama, of our earnest hope and desire that stability and prosperity shall attend the new State, and that, in harmony with the United States, it may be the providential instrument of untold benefit to the civilized world through the opening of a highway of universal commerce across its exceptionally favored territory.

For yourself, Mr. Minister, I wish success in the discharge of the important mission to which you have been called.

17. A Commercial Treaty with Japan

To replace the commercial treaty which had regulated the relations between the United States and Japan since 1894, a new treaty was concluded in February, 1911. The earlier treaty ¹ had not expired. But the Japanese Government, which was then overhauling its commercial treaties with a number of powers, asked that a new one be negotiated. This was in pursuance of its policy to take prompt advantage of the increased prestige of Japan as the result of the successful termination of the Russo-Japanese War. The treaty of 1894 contained a provision by which the United States reserved to itself the right to deal with all questions of immigration by act of Congress, and Japan especially desired that this feature be rescinded. The State Department at Washington, on its part, welcomed the op-

¹ Concluded November 22, 1894, and proclaimed March 21, 1895. 29 *U. S. Stat. at Large*, 848.

portunity to revise the treaty because of the opportunity afforded to negotiate for certain highly desirable commercial advantages, particularly "most favored nation" treatment in respect to Japanese tariff, patent, and copyright laws. The general purport of the treaty was to give the United States the coveted commercial privileges, in return for the substitution of the "gentlemen's agreement" (by which Japan agreed voluntarily to restrict the immigration of laborers to the United States) for direct control by Congress. It is upon this treaty that Japan has based her claim that the Immigration Act of 1924¹ violates her rights.

The form in which the treaty is here given is that of a Presidential proclamation, which, of course, is the form in which a treaty finally becomes effective as the supreme law of the land. Accordingly, the document includes not only the text of the treaty but also the reservation added by the Senate. This instrument is typical of the commercial treaties which the United States has with almost all important powers. In form, it differs but slightly from an ordinary political treaty.

SOURCE—37 *U. S. Stat. at Large*, 1504.

BY THE PRESIDENT OF THE UNITED STATES OF
AMERICA.

A PROCLAMATION.

Whereas a Treaty of Commerce and Navigation between the United States of America and the Empire of Japan, was concluded and signed by their respective Plenipotentiaries at Washington on the twenty-first day of February, one thousand nine hundred and eleven, the original of which Treaty, being in the English language, is, as amended by the Senate of the United States, word for word as follows:

The President of the United States of America and His Majesty the Emperor of Japan, being desirous to strengthen the relations of amity and good understanding which happily exist between the two nations, and believing that the fixation in a

¹ This act prohibits the general immigration of aliens who are "ineligible to citizenship." 43 *U. S. Stat. at Large*, 153.

manner clear and positive of the rules which are hereafter to govern the commercial intercourse between their respective countries will contribute to the realization of this most desirable result, have resolved to conclude a Treaty of Commerce and Navigation for that purpose, and to that end have named their Plenipotentiaries, that is to say:

The President of the United States of America, Philander C. Knox, Secretary of State of the United States; and

His Majesty the Emperor of Japan, Baron Yasuya Uchida, Jusammi, Grand Cordon of the Imperial Order of the Rising Sun, His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States of America;

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE I.

The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

They shall not be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects.

The citizens or subjects of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects.

They shall, however, be exempt in the territories of the other from compulsory military service either on land or sea, in the regular forces, or in the national guard, or in the militia; from all contributions imposed in lieu of personal service, and from all forced loans or military exactions or contributions.

ARTICLE II.

The dwellings, warehouses, manufactories and shops of the citizens or subjects of each of the High Contracting Parties in the territories of the other, and all premises appertaining thereto used for purposes of residence or commerce, shall be respected. It shall not be allowable to proceed to make a domiciliary visit to, or a search of, any such buildings and premises, or to examine or inspect books, papers or accounts, except under the conditions and with the forms prescribed by the laws, ordinances and regulations for nationals.

ARTICLE III.

Each of the High Contracting Parties may appoint Consuls General, Consuls, Vice Consuls, Deputy Consuls and Consular Agents in all ports, cities and places of the other, except in those where it may not be convenient to recognize such officers. This exception, however, shall not be made in regard to one of the Contracting Parties without being made likewise in regard to all other Powers.

Such Consuls General, Consuls, Vice Consuls, Deputy Consuls and Consular Agents, having received exequaturs or other sufficient authorizations from the Government of the country to which they are appointed, shall, on condition of reciprocity, have the right to exercise the functions and to enjoy the exemptions and immunities which are or may hereafter be granted to the consular officers of the same rank of the most favored nation. The Government issuing exequaturs or other authorizations may in its discretion cancel the same on communicating the reasons for which it thought proper to do so.

ARTICLE IV.

There shall be between the territories of the two High Contracting Parties reciprocal freedom of commerce and navigation. The citizens or subjects of each of the Contracting Parties, equally with the citizens or subjects of the most favored nation, shall have liberty freely to come with their ships and cargoes to all places, ports and rivers in the territories of the other which are or may be opened to foreign commerce, subject always to the laws of the country to which they thus come.

ARTICLE V.

The import duties on articles, the produce or manufacture of the territories of one of the High Contracting Parties, upon importation into the territories of the other, shall henceforth be regulated either by treaty between the two countries or by the internal legislation of each.

Neither Contracting Party shall impose any other or higher duties or charges on the exportation of any article to the territories of the other than are or may be payable on the exportation of the like article to any other foreign country.

Nor shall any prohibition be imposed by either country on the importation or exportation of any article from or to the territories of the other which shall not equally extend to the like article imported from or exported to any other country. The last provision is not, however, applicable to prohibitions or restrictions maintained or imposed as sanitary measures or for purposes of protecting animals and useful plants.

ARTICLE VI.

The citizens or subjects of each of the High Contracting Parties shall enjoy in the territories of the other exemption from all transit duties and a perfect equality of treatment with native citizens or subjects in all that relates to warehousing, bounties, facilities and drawbacks.

ARTICLE VII.

Limited-liability and other companies and associations, commercial, industrial, and financial, already or hereafter to be organized in accordance with the laws of either High Contracting Party and domiciled in the territories of such Party, are authorized, in the territories of the other, to exercise their rights and appear in the courts either as plaintiffs or defendants, subject to the laws of such other Party.

The foregoing stipulation has no bearing upon the question whether a company or association organized in one of the two countries will or will not be permitted to transact its business or industry in the other, this permission remaining always subject to the laws and regulations enacted or established in the respective countries or in any part thereof.

ARTICLE VIII.

All articles which are or may be legally imported into the ports of either High Contracting Party from foreign countries in national vessels may likewise be imported into those ports in vessels of the other Contracting Party, without being liable to any other or higher duties or charges of whatever denomination than if such articles were imported in national vessels. Such reciprocal equality of treatment shall take effect without distinction, whether such articles come directly from the place of origin or from any other foreign place.

In the same manner, there shall be perfect equality of treatment in regard to exportation, so that the same export duties shall be paid, and the same bounties and drawbacks allowed, in the territories of each of the Contracting Parties on the exportation of any article which is or may be legally exported therefrom, whether such exportation shall take place in vessels of the United States or in Japanese vessels, and whatever may be the place of destination, whether a port of the other Party or of any third Power.

ARTICLE IX.

In all that regards the stationing, loading and unloading of vessels in the ports of the territories of the High Contracting Parties, no privileges shall be granted by either Party to national vessels which are not equally, in like cases, granted to the vessels of the other country; the intention of the Contracting Parties being that in these respects the respective vessels shall be treated on the footing of perfect equality.

ARTICLE X.

Merchant vessels navigating under the flag of the United States or that of Japan and carrying the papers required by their national laws to prove their nationality shall in Japan and in the United States be deemed to be vessels of the United States or of Japan, respectively.

ARTICLE XI.

No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties of whatever denomination, levied in the name or for the profit of Government, public

functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels in general, or on vessels of the most favored nation. Such equality of treatment shall apply reciprocally to the respective vessels from whatever place they may arrive and whatever may be their place of destination.

ARTICLE XII.

Vessels charged with performance of regular scheduled postal service of one of the High Contracting Parties, whether belonging to the State or subsidized by it for the purpose, shall enjoy, in the ports of the territories of the other, the same facilities, privileges and immunities as are granted to like vessels of the most favored nation.

ARTICLE XIII.

The coasting trade of the High Contracting Parties is excepted from the provisions of the present Treaty and shall be regulated according to the laws of the United States and Japan, respectively. It is, however, understood that the citizens or subjects of either Contracting Party shall enjoy in this respect most-favored-nation treatment in the territories of the other.

A vessel of one of the Contracting Parties, laden in a foreign country with cargo destined for two or more ports of entry in the territories of the other, may discharge a portion of her cargo at one of the said ports, and, continuing her voyage to the other port or ports of destination, there discharge the remainder of her cargo, subject always to the laws, tariffs and customs regulations of the country of destination; and, in like manner and under the same reservation, the vessels of one of the Contracting Parties shall be permitted to load at several ports of the other for the same outward voyages.

ARTICLE XIV.

Except as other wise expressly provided in this Treaty, the High Contracting Parties agree that, in all that concerns commerce and navigation, any privilege, favor or immunity which either Contracting Party has actually granted, or may hereafter grant, to the citizens or subjects of any other State shall be extended to

the citizens or subjects of the other Contracting Party gratuitously, if the concession in favor of that other State shall have been gratuitous, and on the same or equivalent conditions, if the concession shall have been conditional.

ARTICLE XV.

The citizens or subjects of each of the High Contracting Parties shall enjoy in the territories of the other the same protection as native citizens or subjects in regard to patents, trade-marks and designs, upon fulfillment of the formalities prescribed by law.

ARTICLE XVI.

The present Treaty shall, from the date on which it enters into operation, supersede the Treaty of Commerce and Navigation dated the 22nd day of November, 1894, and from the same date the last-named Treaty shall cease to be binding.

ARTICLE XVII.

The present Treaty shall enter into operation on the 17th of July, 1911, and shall remain in force twelve years or until the expiration of six months from the date on which either of the Contracting Parties shall have given notice to the other of its intention to terminate the Treaty.

In case neither of the Contracting Parties shall have given notice to the other six months before the expiration of the said period of twelve years of its intention to terminate the Treaty, it shall continue operative until the expiration of six months from the date on which either Party shall have given such notice.

ARTICLE XVIII.

The present Treaty shall be ratified and the ratifications thereof shall be exchanged at Tokyo as soon as possible and not later than three months from the present date.

In witness whereof, the respective Plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 21st day of February, in the nineteen hundred and eleventh year of the Christian era, corresponding to the 21st day of the 2nd month of the 44th year of Meiji.

PHILANDER C KNOX [SEAL]

Y. UCHIDA [SEAL]

And whereas, the advice and consent of the Senate of the United States to the ratification of the said Treaty was given with the understanding "that the treaty shall not be deemed to repeal or affect any of the provisions of the Act of Congress entitled 'An Act to Regulate the Immigration of Aliens into the United States,' approved February 20th, 1907;"¹

And whereas, the said understanding has been accepted by the Government of Japan;

And whereas, the said treaty, as amended by the Senate of the United States, has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Tokyo, on the fourth day of April, one thousand nine hundred and eleven;

Now, therefore, be it known that I, WILLIAM HOWARD TAFT, President of the United States of America, have caused the said Treaty, as amended, and the said understanding to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifth day of April in the year of our Lord one thousand nine hundred and eleven, and of the independence of the United States of America the one hundred and thirty-fifth.

[SEAL]

WM H TAFT

By the President:

P C KNOX

Secretary of State.

DECLARATION.

In proceeding this day to the signature of the Treaty of Commerce and Navigation between Japan and the United States the undersigned, Japanese Ambassador in Washington, duly authorized by his Government has the honor to declare that the Imperial Japanese Government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the

¹For text see 34 *U. S. Stat. at Large*, 898.—EDITOR.

past three years exercised in regulation of emigration of laborers to the United States.

Y. UCHIDA

FEBRUARY 21, 1911.

18. A Presidential Veto

As early as 1891, a very determined effort was made to secure the admission of Arizona as a separate state. A bill for that purpose passed the House of Representatives on June 6, 1892, but failed to secure consideration in the Senate. A decade later another bill met a similar fate. In 1906 Congress proposed that Arizona and New Mexico should be combined as a single State, but although New Mexico favored the plan, the people of Arizona rejected it by an overwhelming vote. On June 20, 1910, an enabling act was passed authorizing the people of the Arizona territory to elect delegates to a convention to frame a fundamental law. This convention was elected the following fall, and the constitution which it made was ratified by a vote of 12,187 to 3,822 at a popular election on February 9, 1911. This constitution contained the following provision:

“Every public officer in the State of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole State. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all the candidates for the office held by such officer, may by petition, which shall be known as a Recall Petition, demand his recall. . . .” Constitution of Arizona, Feb. 9, 1911, Art. VIII, Sect. 1, cl. 1.

In spite of the fact that this clause raised considerable opposition, the act providing for the unconditional admission of Arizona passed by substantial majorities in both houses of Congress. This act of admission, however, pro-

vided that the President should not proclaim the admission of the territory until the voters had had an opportunity to register a separate opinion on an amendment to the proposed constitution inserting in this section the words "except members of the judiciary" after the word "Arizona."

Five days later, August 15, 1911, President Taft returned the bill to the House of Representatives with the message that follows. Perhaps nowhere is the argument against the recall of judges more cogently presented, and the document is an excellent illustration of a veto message. Furthermore, the incident not only illustrates the process which is generally followed in admitting a territory to statehood, but it also presents one of the most important precedents on the question of federal power to impose limitations on incoming States.¹

SOURCE—*Congressional Record* (62nd Cong., 1st Sess.), Vol. XLVII, pp. 3964-3966, August 15, 1911.

To the House of Representatives:

I return herewith, without my approval, House joint resolution No. 14, "To admit the Territories of New Mexico and Arizona as States into the Union on an equal footing with the original States."

Congress, by an enabling act approved June 20, 1910, provided for the calling of a constitutional convention in each of these Territories, the submission of the constitution proposed by the convention to the electors of the Territory, the approval of the constitution by the President and Congress, the proclamation of the fact by the President, and the election of State officers. Both in Arizona and New Mexico conventions have been held, constitutions adopted and ratified by the people and submitted to the President and Congress. I have approved the constitution of New Mexico, and so did the House of Representatives of the Sixty-first Congress. The Senate, however, failed to take action upon it. I have not approved the Arizona constitution, nor have the two Houses of Congress, except as they have done so by the joint

¹See F. A. Ogg and P. O. Ray, *Introduction to American Government* (2d ed.), 143-145.

resolution under consideration. The resolution admits both Territories to statehood with their constitutions, on condition that at the time of the election of State officers New Mexico shall submit to its electors an amendment to its new constitution altering and modifying its provision for future amendments, and on the further condition that Arizona shall submit to its electors, at the time of the election of its State officers, a proposed amendment to its constitution by which judicial officers shall be excepted from the section permitting a recall of all elective officers.

If I sign this joint resolution, I do not see how I can escape responsibility for the judicial recall of the Arizona constitution. The joint resolution admits Arizona with the judicial recall, but requires the submission of the question of its wisdom to the voters. In other words, the resolution approves the admission of Arizona with the judicial recall, unless the voters themselves repudiate it. Under the Arizona constitution all elective officers, and this includes county and State judges, six months after their election are subject to the recall. It is initiated by a petition signed by electors equal to 25 per cent of the total number of votes cast for all the candidates for the office at the previous general election. Within five days after the petition is filed the officer may resign. Whether he does or not, an election ensues in which his name, if he does not resign, is placed on the ballot with that of all other candidates. The petitioners may print on the official ballot 200 words showing their reasons for recalling the officer, and he is permitted to make defense in the same place in 200 words. If the incumbent receives the highest number of the votes, he continues in his office; if not, he is removed from office, and is succeeded by the candidate who does receive the highest number.

This provision of the Arizona constitution, in its application to county and State judges, seems to me so pernicious in its effect, so destructive of independence in the judiciary, so likely to subject the rights of the individual to the possible tyranny of a popular majority, and, therefore, to be so injurious to the cause of free government, that I must disapprove a constitution containing it. I am not now engaged in performing the office given me in the enabling act already referred to, approved June 20, 1910, which was that of approving the constitutions ratified by the peoples of the Territories. It may be argued from the text of that act that in giving or withholding the approval under the act my only duty is to examine the proposed constitution, and if I find nothing

in it inconsistent with the Federal Constitution, the principles of the Declaration of Independence, or the enabling act, to register my approval. But now I am discharging my constitutional function in respect to the enactment of laws, and my discretion is equal to that of the Houses of Congress. I must therefore withhold my approval from this resolution if in fact I do not approve it as a matter of governmental policy. Of course, a mere difference of opinion as to the wisdom of details in a State constitution ought not to lead me to set up my opinion against that of the people of the Territory. It is to be their government, and while the power of Congress to withhold or grant statehood is absolute, the people about to constitute a State should generally know better the kind of government and constitution suited to their needs than Congress or the Executive. But when such a constitution contains something so destructive of free government as the judicial recall, it should be disapproved.

A government is for the benefit of all the people. We believe that this benefit is best accomplished by popular government, because in the long run each class of individuals is apt to secure better provision for themselves through their own voice in government than through the altruistic interest of others, however intelligent or philanthropic. The wisdom of ages has taught that no government can exist except in accordance with laws and unless the people under it either obey the laws voluntarily or are made to obey them. In a popular government the laws are made by the people—not by all the people—but by those supposed and declared to be competent for the purpose, as males over 21 years of age, and not by all of these—but by a majority of them only. Now, as the government is for all the people, and is not solely for a majority of them, the majority in exercising control either directly or through its agents is bound to exercise the power for the benefit of the minority as well as the majority. But all have recognized that the majority of a people, unrestrained by law, when aroused and without the sobering effect of deliberation and discussion, may do injustice to the minority or to the individual when the selfish interest of the majority prompts. Hence arises the necessity for a constitution by which the will of the majority shall be permitted to guide the course of the government only under controlling checks that experience has shown to be necessary to secure for the minority its share of the benefit to the whole people that a popular government is established to bestow. A

popular government is not a government of a majority, by a majority, for a majority of the people. It is a government of the whole people by a majority of the whole people under such rules and checks as will secure a wise, just, and beneficent government for all the people. It is said you can always trust the people to do justice. If that means all the people and they all agree, you can. But ordinarily they do not all agree, and the maxim is interpreted to mean that you can always trust a majority of the people. This is not invariably true; and every limitation imposed by the people upon the power of the majority in their constitutions is an admission that it is not always true. No honest, clear-headed man, however great a lover of popular government, can deny that the unbridled expression of the majority of a community converted hastily into law or action would sometimes make a government tyrannical and cruel. Constitutions are checks upon the hasty action of the majority. They are the self-imposed restraints of a whole people upon a majority of them to secure sober action and a respect for the rights of the minority, and of the individual in his relation to other individuals, and in his relation to the whole people in their character as a state or government.

The Constitution distributes the functions of government into three branches—the legislative, to make the laws; the executive, to execute them; and the judicial, to decide in cases arising before it the rights of the individual as between him and others and as between him and the Government. This division of government into three separate branches has always been regarded as a great security for the maintenance of free institutions, and the security is only firm and assured when the judicial branch is independent and impartial. The executive and legislative branches are representative of the majority of the people which elected them in guiding the course of the Government within the limits of the Constitution. They must act for the whole people, of course; but they may properly follow, and usually ought to follow, the views of the majority which elected them in respect to the governmental policy best adapted to secure the welfare of the whole people. But the judicial branch of the Government is not representative of a majority of the people in any such sense, even if the mode of selecting judges is by popular election. In a proper sense, judges are servants of the people; that is, they are doing work which must be done for the Government and in the interest of

all the people, but it is not work in the doing of which they are to follow the will of the majority except as that is embodied in statutes lawfully enacted according to constitutional limitations. They are not popular representatives. On the contrary, to fill their office properly they must be independent. They must decide every question which comes before them according to law and justice. If this question is between individuals, they will follow the statute, or the unwritten law if no statute applies, and they take the unwritten law growing out of tradition and custom from previous judicial decisions. If a statute or ordinance affecting a cause before them is not lawfully enacted, because it violates the constitution adopted by the people, then they must ignore the statute and decide the question as if the statute had never been passed. This power is a judicial power imposed by the people on the judges by the written constitution. In early days some argued that the obligations of the Constitution operated directly on the conscience of the legislature, and only in that manner, and that it was to be conclusively presumed that whatever was done by the legislature was constitutional. But such a view did not obtain with our hard-headed, courageous, and far-sighted statesmen and judges, and it was soon settled that it was the duty of judges in cases properly arising before them to apply the law and so to declare what was the law, and that if what purported to be statutory law was at variance with the fundamental law, i.e., the Constitution, the seeming statute was not law at all, was not binding on the courts, the individuals, or any branch of the Government, and that it was the duty of the judges so to decide. This power conferred on the judiciary in our form of government is unique in the history of governments, and its operation has attracted and deserved the admiration and commendation of the world. It gives to our judiciary a position higher, stronger, and more responsible than that of the judiciary of any other country, and more effectively secures adherence to the fundamental will of the people.

What I have said has been to little purpose if it has not shown that judges to fulfill their functions properly in our popular Government must be more independent than in any other form of government, and that need of independence is greatest where the individual is one litigant and the State, guided by the successful and governing majority, is the other. In order to maintain the rights of the minority and the individual and to preserve our

constitutional balance, we must have judges with courage to decide against the majority when justice and law require.

By the recall in the Arizona constitution it is proposed to give to the majority power to remove arbitrarily, and without delay, any judge who may have the courage to render an unpopular decision. By the recall it is proposed to enable a minority of 25 per cent of the voters of the district or State, for no prescribed cause, after the judge has been in office six months, to submit the question of his retention in office to the electorate. The petitioning minority must say on the ballot what they can against him in 200 words, and he must defend as best he can in the same space. Other candidates are permitted to present themselves and have their names printed on the ballot, so that the recall is not based solely on the record or the acts of the judge, but also on the question whether some other and more popular candidate has been found to unseat him. Could there be a system more ingeniously devised to subject judges to momentary gusts of popular passion than this? We can not be blind to the fact that often an intelligent and respectable electorate may be so roused upon an issue that it will visit with condemnation the decision of a just judge, though exactly in accord with the law governing the case, merely because it affects unfavorably their contest. Controversies over elections, labor troubles, racial or religious issues, issues as to the construction or constitutionality of liquor laws, criminal trials of popular or unpopular defendants, the removal of county seats, suits by individuals to maintain their constitutional rights in obstruction of some popular improvement—these and many other cases could be cited in which a majority of a district electorate would be tempted by hasty anger to recall a conscientious judge if the opportunity were open all the time. No period of delay is interposed for the abatement of popular feeling. The recall is devised to encourage quick action and to lead the people to strike while the iron is hot. The judge is treated as the instrument and servant of a majority of the people and subject to their momentary will, not after a long term in which his qualities as a judge and his character as a man have been subjected to a test of all the varieties of judicial work and duty so as to furnish a proper means of measuring his fitness for continuance in another term. On the instant of an unpopular ruling, while the spirit of protest has not had time to cool, and even while an appeal may be pending from his ruling, in which

he may be sustained, he is to be haled before the electorate as a tribunal, with no judicial hearing, evidence, or defense, and thrown out of office and disgraced for life because he has failed, in a single decision, it may be, to satisfy the popular demand. Think of the opportunity such a system would give to unscrupulous political bosses in control, as they have been in control not only of conventions but elections! Think of the enormous power for evil given to the sensational, muckraking portion of the press in rousing prejudice against a just judge by false charges and insinuations, the effect of which in the short period of an election by recall it would be impossible for him to meet and offset! Supporters of such a system seem to think that it will work only in the interest of the poor, the humble, the weak and the oppressed; that it will strike down only the judge who is supposed to favor corporations and be affected by the corrupting influence of the rich. Nothing could be further from the ultimate result. The motive it would offer to unscrupulous combinations to seek to control politics in order to control the judges is clear. Those would profit by the recall who have the best opportunity of rousing the majority of the people to action on a sudden impulse. Are they likely to be the wisest or the best people in a community? Do they not include those who have money enough to employ the firebrands and slanderers in a community and the stirrers-up of social hate? Would not self-respecting men well hesitate to accept judicial office with such a sword of Damocles hanging over them? What kind of judgments might those on the unpopular side expect from courts whose judges must make their decisions under such legalized terrorism? The character of the judges would deteriorate to that of trimmers and timeservers, and independent judicial action would be a thing of the past. As the possibilities of such a system pass in review, is it too much to characterize it as one which will destroy the judiciary, its standing, and its usefulness?

The argument has been made to justify the judicial recall that it is only carrying out the principle of the election of the judges by the people. The appointment by the executive is by the representative of the majority, and so far as future bias is concerned there is no great difference between the appointment and the election of judges. The independence of the judiciary is secured rather by a fixed term and fixed and irreducible salary. It is true that when the term of judges is for a limited number of

years and reëlection is necessary, it has been thought and charged sometimes that shortly before election in cases in which popular interest is excited, judges have leaned in their decisions toward the popular side.

As already pointed out, however, in the election of judges for a long and fixed term of years, the fear of popular prejudice as a motive for unjust decisions is minimized by the tenure on the one hand, while the opportunity which the people have calmly to consider the work of a judge for a full term of years in deciding as to his reëlection generally insured from them a fair and reasonable consideration of his qualities as a judge. While, therefore, there have been elected judges who have bowed before unjust popular prejudice, or who have yielded to the power of political bosses in their decisions, I am convinced that these are exceptional, and that, on the whole, elected judges have made a great American judiciary. But the success of an elective judiciary certainly furnishes no reason for so changing the system as to take away the very safeguards which have made it successful.

Attempt is made to defend the principle of judicial recall by reference to States in which judges are said to have shown themselves to be under corrupt corporate influence and in which it is claimed that nothing but a desperate remedy will suffice. If the political control in such States is sufficiently wrested from corrupting corporations to permit the enactment of a radical constitutional amendment like that of judicial recall, it would seem possible to make provision in its stead for an effective remedy by impeachment in which the cumbrous features of the present remedy might be avoided, but the opportunity for judicial hearing and defense before an impartial tribunal might be retained. Real reforms are not to be effected by patent short cuts or by abolishing those requirements which the experience of ages has shown to be essential in dealing justly with every one. Such innovations are certain in the long run to plague the inventor or first user and will come readily to the hand of the enemies and corrupters of society after the passing of the just popular indignation that prompted their adoption.

Again, judicial recall is advocated on the ground that it will bring the judges more into sympathy with the popular will and the progress of ideas among the people. It is said that now judges are out of touch with the movement toward a wider democracy and a greater control of governmental agencies in the interest and for

the benefit of the people. The righteous and just course for a judge to pursue is ordinarily fixed by statute or clear principles of law, and the cases in which his judgment may be affected by his political, economic, or social views are infrequent. But even in such cases judges are not removed from the people's influence. Surround the judiciary with all the safeguards possible, create judges by appointment, make their tenure for life, forbid diminution of salary during their term, and still it is impossible to prevent the influence of popular opinion from coloring judgments in the long run. Judges are men, intelligent, sympathetic men, patriotic men, and in those fields of the law in which the personal equation unavoidably plays a part, there will be found a response to sober popular opinion as it changes to meet the exigency of social, political, and economic changes. Indeed, this should be so. Individual instances of a hidebound and retrograde conservatism on the part of courts in decisions which turn on the individual economic or sociological views of the judges may be pointed out; but they are not many, and do not call for radical action. In treating of courts we are dealing with a human machine, liable, like all the inventions of man, to err, but we are dealing with a human institution that likens itself to a divine institution, because it seeks and preserves justice. It has been the corner stone of our gloriously free Government, in which the rights of the individual and of the minority have been preserved, while governmental action of the majority has lost nothing of beneficent progress, efficacy, and directness. This balance was planned in the Constitution by its framers, and has been maintained by our independent judiciary.

Precedents are cited from State constitutions said to be equivalent to a popular recall. In some, judges are removable by a vote of both houses of the legislature. This is a mere adoption of the English address of Parliament to the Crown for the removal of judges. It is similar to impeachment, in that a form of hearing is always granted. Such a provision forms no precedent for a popular recall without adequate hearing and defense, and with new candidates to contest the election.

It is said the recall will be rarely used. If so, it will be rarely needed. Then why adopt a system so full of danger? But it is a mistake to suppose that such a powerful lever for influencing judicial decisions and such an opportunity for vengeance because of adverse ones will be allowed to remain unused.

But it is said that the people of Arizona are to become an

independent State when created, and even if we strike out judicial recall now, they can reincorporate it in their constitution after statehood.

To this I would answer that in dealing with the courts, which are the corner stone of good government, and in which not only the voters, but the nonvoters and nonresidents, have a deep interest as a security for their rights of life, liberty, and property, no matter what the future action of the State may be, it is necessary for the authority which is primarily responsible for its creation to assert in no doubtful tones the necessity for an independent and untrammelled judiciary.

WM. H. TAFT.

THE WHITE HOUSE, *August 15, 1911.*

SUPPLEMENTARY NOTE

This veto message was referred, together with the bill, to the Committee on Territories in the House of Representatives, which shortly afterwards reported favorably a resolution of the Senate providing for conditional admission. This resolution became law August 21, 1911, and provided that the President should proclaim the admission of Arizona as soon as the electors of the Territory had ratified an amendment to the constitution exempting the judiciary from the recall provisions. In case this amendment should be lost, the act instructed the President to decline to issue the proclamation of admission. As was expected, the electors promptly accepted the amendment by an overwhelming vote, and on February 14, 1912, President Taft issued a proclamation declaring Arizona admitted to the full privileges of statehood.

Hardly was the ink on the President's signature dry before a petition was circulated to restore the original section of the constitution without the words "except members of the judiciary"; and at the same election in which President Taft was defeated for a second term, Arizona had the satisfaction of restoring its fundamental law to its original form. The amendment was passed by a vote of 16,272 to 3,705, and no subsequent attempt has been made to strike it from the constitution.

19. Lincoln and the Admission of Nevada

One of the methods by which the President influences the course of legislation in Congress is well illustrated by the following incident of Lincoln's administration.

SOURCE—Charles A. Dana, *Recollections of the Civil War* (New York, 1902), 174-177. (Used by permission of D. Appleton and Company.)

Lincoln was a supreme politician. He understood politics because he understood human nature. I had an illustration of this in the spring of 1864. The administration had decided that the Constitution of the United States should be amended so that slavery should be prohibited. This was not only a change in our national policy, it was also a most important military measure. It was intended not merely as a means of abolishing slavery forever, but as a means of affecting the judgment and the feelings and the anticipations of those in rebellion. It was believed that such an amendment to the Constitution would be equivalent to new armies in the field, that it would be worth at least a million men, that it would be an intellectual army that would tend to paralyze the enemy and break the continuity of his ideas.

In order thus to amend the Constitution, it was necessary first to have the proposed amendment approved by three-fourths of the States. When that question came to be considered, the issue was seen to be so close that one State more was necessary. The State of Nevada was organized and admitted into the Union to answer that purpose. I have sometimes heard people complain of Nevada as superfluous and petty, not big enough to be a State; but when I hear that complaint, I always hear Abraham Lincoln saying, "It is easier to admit Nevada than to raise another million of soldiers."

In March, 1864, the question of allowing Nevada to form a State government finally came up in the House of Representatives. There was strong opposition to it. For a long time beforehand the question had been canvassed anxiously. At last, late one afternoon, the President came into my office, in the third story of the War Department. He used to come there sometimes rather than send for me, because he was fond of walking and liked to get away from the crowds in the White House. He came in and shut the door.

"Dana," he said, "I am very anxious about this vote. It has got to be taken next week. The time is very short. It is going to be a great deal closer than I wish it was."

"There are plenty of Democrats who will vote for it," I replied. "There is James E. English, of Connecticut; I think he is sure, isn't he?"

"Oh, yes; he is sure on the merits of the question."

"Then," said I, "there's 'Sunset' Cox, of Ohio. How is he?"

"He is sure and fearless. But there are some others that I am not clear about. There are three that you can deal with better than anybody else, perhaps, as you know them all. I wish you would send for them."

He told me who they were; it isn't necessary to repeat the names here. One man was from New Jersey and two from New York.

"What will they be likely to want?" I asked.

"I don't know," said the President; "I don't know. It makes no difference, though, what they want. Here is the alternative: that we carry this vote, or be compelled to raise another million, and I don't know how many more men, and fight no one knows how long. It is a question of three votes or new armies."

"Well, sir," said I, "what shall I say to these gentlemen?"

"I don't know," said he; "but whatever promise you make to them I will perform."

I sent for the men and saw them one by one. I found that they were afraid of their party. They said that some fellows in the party would be down on them. Two of them wanted internal revenue collector's appointments. "You shall have it," I said. Another one wanted a very important appointment about the custom house of New York. I knew the man well whom he wanted to have appointed. He was a Republican, though the congressman was a Democrat. I had served with him in the Republican county committee of New York. The office was worth perhaps twenty thousand dollars a year. When the congressman stated the case, I asked him, "Do you want that?"

"Yes," said he.

"Well," I answered, "you shall have it."

"I understand, of course," said he, "that you are not saying this on your own authority?"

"Oh, no," said I; "I am saying it on the authority of the President."

Well, these men voted that Nevada be allowed to form a State government, and thus they helped secure the vote which was required. The next October the President signed the proclamation admitting the State. In the February following Nevada was one of the States which ratified the Thirteenth Amendment, by which slavery was abolished by constitutional prohibition in all of the United States. I have always felt that this little piece of side politics was one of the most judicious, humane, and wise uses of executive authority that I have ever assisted in or witnessed.

20. Extension of the Merit System

The Civil Service Act of 1883¹ placed only a small proportion of the employees of the federal government under the merit system. Since that time the number has been gradually increased from about 14,000 to more than 400,000 in 1924. Many of these extensions have been made by acts of Congress, but in a considerable number of cases they have been effected by the President alone through his ordinance power. This is usually done by issuing an executive order amending the Civil Service Rules to include the class of employees which it is desired to bring under them. Thus since June 30, 1902, the rural free delivery carriers have been included within the classified service as the result of an amendment to the rules (given below) ordered by President Roosevelt, November 27, 1901. The amendment affected the positions of about 8,800 employees.

SOURCE—*Nineteenth Report of the Civil Service Commission* (Washington, 1902), 79-80.

Section 4 of Rule III was amended by striking out all of the first sentence and inserting in lieu thereof the following:

The post-office service shall include all officers and employees in free-delivery post-offices and in the rural free-delivery service, except persons employed merely as laborers or workmen and persons whose appointments are subject to confirmation by the Senate: *Provided*, That until regulations for appointments of carriers in

¹ 22 U. S. Stat. at Large, 403.

the rural free-delivery service shall become operative said carriers shall not be treated as classified hereunder: *And provided further*, That transfers shall not be made from the position of carrier in the rural free-delivery service to any other position in the classified service.

The sentence stricken out by this amendment reads as follows:

The post-office service shall include the officers and employees in any free-delivery post-office who have been, or may hereafter be, classified under the civil-service act.

21. A United States Civil Service Examination

Each type of position in the federal classified service requires a different kind of examination, but the following synopsis of the Railway Postal Clerk Examination indicates something of the form and character of many of these tests. Typical examinations for most of the classified positions may be secured by writing the Civil Service Commission, Washington, D. C.

SOURCE—Leaflet furnished by the Civil Service Commission.

UNITED STATES CIVIL SERVICE EXAMINATION RAILWAY POSTAL CLERK

May 3, 1924

SAMPLE QUESTIONS

Mail tests.—These tests are intended to show the competitor's ability to do certain kinds of work required of railway postal clerks, but it is not necessary in answering them for a competitor to have had any previous experience in the Postal Service.

Exercise 1.—Suppose you were sorting outgoing mail. Each square below represents a mail sack for the mail going to the cities named in the square. After each city in the list below the squares write the number of the sack carrying mail to that city. In the sample list, "1" is written after "Seattle" because letters for Seattle should be dropped in sack numbered 1. "3" is written after "Chicago" because letters for Chicago should be dropped in the sack numbered 3. "2" should be written in the blank after

“St. Paul” because letters for St. Paul should be dropped in the sack numbered 2. Fill in the blanks after the other cities.

1 Seattle Portland Spokane	2 Minneapolis St. Paul Des Moines	3 Milwaukee Chicago Grand Rapids
--	---	--

<i>City.</i>	<i>No.</i>	<i>City.</i>	<i>No.</i>	<i>City.</i>	<i>No.</i>
Seattle	1	Milwaukee	...	Grand Rapids. ...	
Chicago	3	Spokane	...	Portland	
St. Paul	...	Des Moines ...	...	Minneapolis ..	

Exercise 2.—During June, July, and August of 1924, post offices will be maintained at the following places, and mail for each place should be put in sacks numbered as follows:

<i>Hughes.</i>	<i>Wooster.</i>	<i>Ravinia.</i>	<i>Fenton.</i>
1	2	3	4
<i>Joplin.</i>	<i>Athens.</i>	<i>Eureka.</i>	
5	6	7	

Six minutes will be allowed for memorizing the names of the cities with their corresponding numbers. On the following page directions similar to the following will be given:

“Beginning September 1, 1924, the post office at Wooster will be discontinued and all mail addressed to Wooster should be sent to Athens until further notice.”

Without referring to the page giving the list of cities and their numbers, write the number of the mail sack in which you would place mail addressed to the following towns on the date named. (The sample is numbered correctly.) “6” is written after “Wooster” because the post office at Wooster was discontinued on September 1, and all mail for Wooster was to be sent to Athens marked “No. 6.” Fill in the blanks for the other cities.

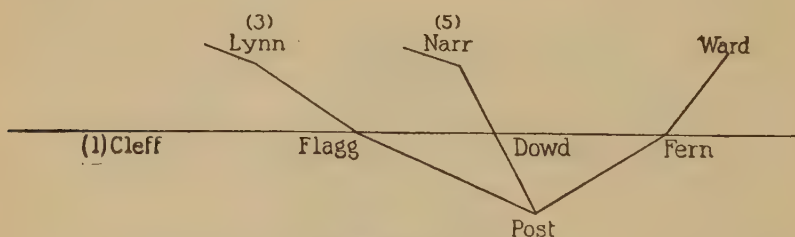
Sept. 10, 1924:

... ³ Ravinia.	... Hughes.	... Joplin.
... ⁴ Fenton.	... Athens.	... Eureka.
... ⁶ Wooster.		

Exercise 3.—Assume that you are a railway postal clerk on train No. 1 and have mail for cities through which your train does not pass, but the mail sacks for such cities must be thrown off at junction points on your run. The cities not on your run are served by trains No. 3 and No. 5, which connect with the line on which your train runs. Write the name of the city at which you would transfer mail to another train if necessary, so as to have the mail reach the city for which it is intended at the earliest possible time, regardless of the number of times it changes cars. Consider that all trains stop one minute and assume that one minute is sufficient time to transfer mail from one train to another.

A map showing the railroad lines and towns and a time-table will be furnished in the examination room, but it is possible to answer all the questions from the time-table alone.

Map:



Time table.

Train No. 1 arrives Cleff at 6.00 a. m.
 Train No. 1 arrives Flagg at 7.00 a. m.
 Train No. 1 arrives Dowd at 7.30 a. m.
 Train No. 1 arrives Fern at 8.00 a. m.
 Train No. 3 arrives Lynn at 6.30 a. m.
 Train No. 3 arrives Flagg at 6.50 a. m.
 Train No. 3 arrives Post at 7.40 a. m.
 Train No. 3 arrives Fern at 8.15 a. m.
 Train No. 3 arrives Ward at 9.00 a. m.
 Train No. 5 arrives Narr at 7.15 a. m.
 Train No. 5 arrives Dowd at 7.35 a. m.
 Train No. 5 arrives Post at 7.50 a. m.

You are a railway postal clerk on train No. 1. Assuming that all trains are on time, write the name of the city at which you would transfer a mail sack for—

	City.	Time of arrival.
Ward, and the time it would arrive at Ward	<i>Fern</i>	9.00 a. m.
Post, and the time it would arrive at Post		

In the examination a larger number of towns and branch lines will be shown on the map and time table, and competitors will be required to indicate the city and time of arrival for certain mail when train No. 1 is delayed a given time, thus changing the place at which the mail must be transferred in order to reach the city to which it is addressed at the earliest possible time.

Exercise 4.—Sheets will be given containing addresses of letters in the handwriting of various senders. The competitor will also be furnished with a list of the names and addresses for which the letters may have been intended, but only one of which is correct. Competitors will be requested to indicate by check mark the person for whom the letter was intended.

General Tests, Including Spelling, Arithmetic, and Location of Cities.

Spelling.—Sentences will be given containing misspelled words designed to test the competitor's ability to spell correctly.

In each of the sentences below the word printed in italics has been misspelled. Spell it *correctly* on the line at the right.

1. The *steemur* carried 500 bags of mail to Europe... *steamer*
2. The trains on this *ralerode* are always on time.... *railroad*

Arithmetic.—1. If a post office handled 153,840 pieces of mail during the month of June, what was the average number of pieces handled per day during the month?... 5,128

2. A postal clerk assorted 1,900 pieces of mail in 50 minutes. The first 25 minutes he assorted 42 pieces per minute. How many pieces per minute did he assort during the last 25 minutes?

3. A railway postal clerk has 100 bags of mail on his train. If he throws off 10 bags at Station A, twice as many at Station B, and three times as many at Station C as at Station A, how many has he left?

Location of cities.—Questions will be asked relating only to location of cities by States, and to relative positions of cities.

22. An Opinion of an Attorney General

Not only is the Attorney-General the chief prosecuting officer for the United States, but he acts as the official legal advisor to the President and the heads of the executive departments. He is frequently requested by these officers to interpret the United States statutes or the Constitution in regard to some particular matter. His opinions, rendered in answer to these requests, are collected in the series of volumes (now over thirty) known as the "Opinions of the Attorney-General." In view of the high position which the Attorney-General occupies, his opinions have more weight than those of a private attorney, and are frequently cited to the courts as the official administrative interpretation of the law. In many instances these opinions are practically final, for if the Attorney-General decides that there is no legal justification for carrying on a certain prosecution, that usually ends the matter—at least for his term of office.

While it is true that the Attorney-General does not always write the opinions himself (they are frequently prepared in the office of the Solicitor-General), he is responsible not only for the views set forth but likewise for the phraseology employed. The following opinion contains the advice given the State Department in respect to its negotiations with the English Foreign Office regarding navigation on the Rainy River, which forms the boundary between Minnesota and Canada. It is typical of the more strongly reasoned statements; and it will be noticed that both the Constitution and the Federal statutes are interpreted in it.

SOURCE—27 *Opinions of the Attorney General* (1909), 327.

CONSTRUCTION OF LONG SAULT RAPIDS DAM, RAINY RIVER.

DEPARTMENT OF JUSTICE,

May 10, 1909

SIR: . . .

The Government of Great Britain has presented to this Government an application for its consent to the construction by the Canadian government of a lock and dam at the foot of Long Sault

Rapids in Rainy River. This river is an international stream forming the boundary line between the State of Minnesota and the northwestern portion of the Province of Ontario. Near Rainy Lake are the Falls of Fort Frances, and about $42\frac{1}{2}$ miles below those falls are the Long Sault Rapids, where the water descends 7 or 8 feet in $1\frac{1}{2}$ miles. By the construction of a dam of the character described, at the foot of these falls, the Rainy River can be made navigable to the Falls of Fort Frances.

It will be necessary, however, that a portion of this dam be constructed on American territory; and the complication arises out of the proposal that consent be given to a foreign government to occupy territory in the manner and for the purpose described, which is a part of the United States, and at the same time, of the State of Minnesota.

You request of me an opinion on the questions of law presented by this state of facts, and in reply I will suggest and answer such questions of law as appear to me to be material.

First. The President and the Senate, by the exercise of the treaty power and without the consent of the State of Minnesota, can grant to the Canadian government the easement desired.

There is much conflict of opinion as to whether or not any part of the territory of a State can be ceded by treaty without the consent of the State, and the question has never been authoritatively settled by the United States Supreme Court. The various opinions upon both sides of the question may be found in 1 Butler's Treaty Making Power, pages 412 et seq.; 2 Butler, etc., pages 238 and 239; and 5 Moore's International Law Digest, 171-175. But I do not think this question here arises, as I do not understand that it is contemplated to deprive the State of Minnesota of its sovereign jurisdiction over this strip of territory, but only to confer upon Canada the right of a private owner of the soil or an easement therein.

That it is consistent for one sovereign power to hold the title to land lying within another, and said land be subject to the jurisdiction of the latter power the same as if held by a private individual, is shown in *Ft. Leavenworth R. R. Co. v. Lowe* (114 U.S. 525, 538). It is true that in this case the discussion was confined to the relationship between the United States and a State under such circumstances, but the difference presents only a question of policy and not of power.

I think the title to or easement in the necessary amount of land

may be, by treaty, vested in the Canadian government, although the land adjoining the river at that place be owned by a private individual. . . .

Second. Congress can, by legislative enactment, authorize the Canadian government to occupy the land in question.

Under the commerce clause of the Constitution, Congress can exercise plenary power over all navigable waters of the United States for all purposes relating to commerce and navigation. And inasmuch as the structure contemplated is for the purpose of improving navigation, there can be no doubt that Congress has power to authorize the construction of the same, and also to authorize the condemnation of property for that purpose, if condemnation be necessary.

Third. With reference to compensating the private owners for the land that must be taken possession of for the construction of the dam, I find the following to be the law:

If no injury should arise from the construction of the dam other than mere occupancy of such portion of the bed and bank of the stream as may be necessary for its construction, such would not constitute a taking of private property for a public use in the constitutional sense, and no liability for compensation would arise therefrom. (*Gibson v. United States*, 166 U. S. 269, 276; *Scranton v. Wheeler*, 179 U. S. 141, 160-165.)

But if, in consequence of the construction of the dam, adjoining lands should be overflowed, and their value permanently destroyed, such would be a taking of private property in the constitutional sense, and it would be necessary to pay proper compensation therefor. (*Pumpelly v. Green Bay Co.*, 13 Wall. 166; *United States v. Lynah*, 188 U. S. 445, 468-474.)

Riparian owners of navigable streams hold title thereto, subject only to the use of their property so far as such use may promote the interests of commerce. I am of the opinion, therefore, that if the *entire title* to such strip of land should be taken, and not a mere easement therein, the owner would be protected by the Constitution, and proper compensation would have to be paid him.

The above principles apply whether the taking be done under treaty or act of Congress. While a treaty is a supreme law, it is only so in so far as it does not conflict with the Constitution, and when private property is taken by treaty it must be compensated for. (2 Butler's Treaty Making Power, sec. 442; *Meade v. United*

States, 2 Ct. C. 224, 275; *Gray v. United States*, 21 Ct. C. 340, 392.)

Fourth. Congress has not conferred upon any person the power to authorize the Canadian government to occupy the American side of the stream for the purpose mentioned.

By sections 9 and 10 of the act of March 3, 1899 (30 Stat. 1151), Congress did not undertake to assume control over navigable streams to such an extent as to deprive a State in which such stream may be situated of all jurisdiction thereover. This statute only in effect provides that under the circumstances described the Secretary of War may withdraw all objection upon the part of the United States to the creation of the structures therein mentioned. (*Lake Shore & Mich. Ry. Co. v. Ohio*, 165 U. S. 365; *Cummings v. Chicago*, 188 U. S. 410.) And not having assumed control of such streams for the National Government, it necessarily follows that Congress has not authorized anyone to act for the Government in the control of the same.

Fifth. Congress has authorized no one to give assent for the United States to the construction of the dam in question, although the legislature of the State of Minnesota should, so far as it has power to do, authorize its construction.

I do not think the first proviso to section 9 of said act of March 3, 1899, wherein it is provided that bridges, dams, dikes, etc., may be built under the authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced, applies to the matter under consideration, for two reasons:

First, it was never contemplated by Congress that such authority should be granted by the State to a foreign government. Under the constitutional provision hereinafter more fully considered, the States are prohibited from entering into any compact or agreement with a foreign power without the consent of Congress. This means that when such consent is given, Congress shall have in mind the particular matter consented to; and certainly Congress did not intend by the general act in question to give its consent for a State to enter into an agreement with a foreign power by which such power might occupy the soil within the jurisdiction of the United States.

Second, the navigable portions of Rainy River do not lie wholly within the State of Minnesota. The stream is an international boundary, and does not, therefore, literally fall within the terms of the act, nor does it fall within the spirit of the act, because the construction of the dam would necessitate an agreement with a foreign power, which, as above stated, was not contemplated by Congress.

Sixth. The State of Minnesota can not enter into a compact or agreement with Great Britain or the Canadian government whereby the dam can be constructed without the consent of Congress.

The third clause of Article I, section 10, of the Constitution provides that—

“No State shall, without the consent of Congress . . . enter into any agreement or compact with another State, or with a foreign power.”

This provision prohibits a State from making any kind of an agreement with a foreign power. (*Holmes v. Jennison*, 14 Pet. 540, 574; *Ex parte Holmes*, 12 Vt. 631; *Poole v. Fleeger*, 11 Pet. 185; *Virginia v. Tennessee*, 148 U. S., 503, 519, 520; Story’s Const. sec. 1403.)

Seventh. It is necessarily implied in the above-mentioned constitutional provision that the dam may be constructed under agreement between Great Britain and the State of Minnesota, to which Congress shall have given its consent.

Eighth. You state that it has been suggested that the Canadian government might undertake the construction of the portion of the dam on the American side of the river through a corporation organized under the laws of the State of Minnesota, said construction having been first properly authorized by Congress.

I think this plan entirely feasible, provided the laws of Minnesota are not in conflict therewith; and it would probably present some advantages, as the corporation would be a citizen of the United States and of the State of Minnesota, and its control would not necessitate negotiations with a foreign government. However, I make this suggestion, that when authority is obtained from Congress to construct the dam, its consent be also obtained for the Canadian government to hold the stock of the Minnesota corporation.

The opinion delivered by Chief Justice Taney in *Holmes v. Jennison*, *supra*, shows that it was the purpose of the framers of

the Constitution to cut off all forms of agreements, both direct and indirect, between States and foreign powers. And, without expressing an opinion as to whether the third clause of Article I, section 10, of the Constitution prohibits, without the consent of Congress, a foreign power from holding all or a majority of the stock of a corporation organized under the laws of a State, the object of which is to acquire territory within the United States, except to say that the validity of such ownership is a matter of grave doubt, I do advise that a precedent be not set in the present instance, whereby a foreign power may be allowed to accomplish that by indirection which it can not accomplish directly.

Very respectfully.

GEORGE W. WICKERSHAM.

The SECRETARY OF STATE.

23. Fraud Orders Issued by the Post Office Department

The carrying and distribution of mail matter is by no means the sole activity of the Post Office Department; there is also—among other things—the protection of the mail service against grave abuses by the unscrupulous. With this object in view, Congress passed a “Lottery Act,” in 1890,¹ which gave the Postmaster General authority to withdraw mailing privileges from any person or concern using them for fraudulent purposes. The following extracts indicate the methods used in issuing fraud orders and show the form followed, together with the reasons assigned in a typical instance of medical fraud uncovered by post-office inspectors.

SOURCES—A. Address of Horace J. Donnelly, Sr., Assistant Solicitor, Post-Office Department, before the Convention of Investment Bankers' Association of America, October 31, 1923, at Washington, D. C. Manuscript furnished through the courtesy of Mr. Donnelly.

B. Copy of order furnished through the courtesy of Mr. Donnelly.

C. Copy of memorandum furnished through the courtesy of Mr. Donnelly.

A

It is not extravagant to say that a million gullible Americans yearly lose their money and property in mail fraud schemes and that a billion dollars annually are so lost. . . .

¹ 26 U. S. Stat. at Large, 465.

It is amazing that so many people in this enlightened age are willing to be duped, but in connection with investment ventures their desire to get something for nothing, or a lot for a little, seems almost to overcome all efforts to protect them. . . .

When Mr. New became the head of the Post Office Department eight months ago he was quick to see what a menace to decent society and sound business these vultures are, and the most vigorous campaign against mail frauds in the history of the Department was started, the drive being aimed particularly at oil stock promoters who then seemed to be running wild in several of the States. The result has been that during these few brief months of his administration, fraud orders have already been issued against the names of 168 persons and concerns of which number 117 were against oil stock promotion operators. Hundreds of other oil promoters, as a result of this campaign, abandoned operations before they could be reached with fraud orders.

In addition to these fraud orders the Department has over 400 criminal cases against oil promoters at Fort Worth, Texas, alone. Already more than 200 have been arrested and indicted, and some brought to trial and convicted, the Department of Justice fully coöperating and working hand in hand with the Post Office Department. . . .

The force of post office inspectors was increased in number to 535, and from this highly intelligent body of investigators flying squads, composed of experts in the art of detecting fraud, were mobilized to follow these promoters from field to field and report their activities to the Solicitor for the Post Office Department at Washington. . . .

After the post office inspectors gather the evidence it is examined by trained attorneys in the Solicitor's office of the Post Office Department, and if a *prima facie* case of fraud is disclosed the promoter is cited to appear before the Solicitor and show cause why a fraud order should not issue. After a full and fair hearing of both sides of the case, the Solicitor decides whether the evidence justifies the issuance of a fraud order.

By such order the postmaster is directed to stamp as fraudulent and return to senders all mail received at his office addressed to the parties named therein, thus cutting off all remittances and automatically putting the promoter out of business.

No more drastic and effective action could be taken. The crook fears it more than any other, even more than criminal pro-

secution, because he wants to continue receiving revenue. I recall the case of a shrewd promoter who after being sent to prison took the warden into partnership with him and resumed operations from that institution.

Practically every line of activity is sought to be operated fraudulently through the mails by some, and it would be an endless task for me to undertake to enumerate the classes of enterprises we encounter. They run from the simple catch-penny sales schemes to gigantic investment swindles of different kinds involving millions of dollars each.

B

Post Office Department

WASHINGTON

November 19, 1924.

ORDER No. 1246

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that Dr. P. F. Hough, . . . Prince Huff, . . . and P. F. Huff, at De Soto, Mississippi, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of the act of Congress entitled "An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes," approved September 19, 1890, said evidence being more fully described in the memorandum of the Solicitor for the Post Office Department of the date of November 18, 1924, and by authority vested in the Postmaster General by said act, . . . the Postmaster General hereby forbids you to pay any Postal Money Order drawn to the order of said parties and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said parties to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped upon the outside of such letters or matter. Where

there is nothing to indicate who are the senders of letters not registered or other matter, you are directed to send such letters and matter to the Division of Dead Letters with the words "Fraudulent: Mail to this address returned by order of Postmaster General" plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) JOHN H. BARTLETT
Acting Postmaster General.

To the Postmaster.
De Soto, Mississippi.
(Case No. 86957-E)

C

November 18, 1924.

In the Matter of Charges that
DR. P. F. HOUGH,
PRINCE HUFF,
P. F. HUFF,

at

De Soto, Mississippi,

are engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in violation of Sections 3929 and 4041 of the Revised Statutes, as amended.

MEMORANDUM FOR THE
POSTMASTER GENERAL

Recommending the issuance of a fraud order.

On October 11, 1924, the above mentioned parties were furnished a copy of a memorandum of charges on file in this office and called upon to show cause on November 5, 1924, why a fraud order should not be issued against them. No one appeared here on the date set for the hearing, but on October 23, 1924, a letter signed by "Mattie Hough" dated at De Soto, Mississippi, October 20, 1924, was received in this office, in which the receipt of the citation was acknowledged and the statement was made that "Prince Hough" was very sick and unable to attend to business, but that as soon as he recovered he would make answer to the charges. No answer has to this date been received.

I have carefully reviewed all of the evidence in this case, and find the facts to be as follows:

P. F. Hough, who employs in the scheme being operated by him

through the mails all of the names set forth in the caption hereof, is a colored man, about 70 years of age. He is not a licensed physician, but he is known among some ignorant people of his own race as a "Voodoo" or "Hoodo" doctor.

In addition to a local "practice" he carries on a mail order business, wherein he represents that he can diagnose any disease to which humanity is heir by having his patients "spit on a piece of white cloth" and send it to him. The evidence before us shows that Hough claims that he will furnish medicine that will cure syphilis, tuberculosis, and other serious disorders diagnosed by him, by means of the "piece of white cloth" mentioned.

In one test case conducted by the inspector who investigated this case Hough was advised that the writer had a bad disease. He replied that he would cure the writer for \$25.00, and instructed him to "spit on a piece of white cloth" and send it to him with \$14.00. The amount demanded was reduced finally to \$5.00, which was sent, with a piece of white rag on which some white of an egg had been smeared. Several days later the patient received a small envelope containing a brown powder, with the following directions:

"Dr Sir Yos ReCeVed Lisen EmtY contents in A Pint Bot fill it With Clen Water take a table Spoon 3 times A Day Before meals Shake the Bot till al ReSolve ——— is the Cause Yo Being Like Yo Ar to Cure Yo & make you Luck & never go Brok & get all the Work Yo Can Do & Bor All the Money Yo Want to Run Eny Bus yo want Will Cost 21 Dols

A frind P. F. Hough Box 86."

Several complaints in evidence indicate that Hough has received and appropriated money sent him for "treatments," and has furnished nothing therefor.

The Postmaster at De Soto, Mississippi, reports that Hough is receiving under the names set forth in the caption hereof an average of about ten letters every day.

The evidence in this case shows that Hough's representations that he can diagnose any disease in the manner indicated above, and that he can cure all diseases, are false and fraudulent.

I therefore recommend that a fraud order be issued against the names set forth in the caption of this memorandum.

(Signed) H. J. DONNELLY

Acting Solicitor.

24. Apportionment Act of 1911

The Constitution provides no automatic method of changing the number of seats to which each state is entitled in the House of Representatives. The authors of the instrument foresaw, however, that redistributions would be made desirable by increases and shifts of population, and expected that there should be a reapportionment after each decennial census. At one time, indeed, Congress attempted to install an automatic method of apportionment.¹ But in every other instance redistributions have been effected by acts similar to the one given below. The size of the House has been increased by each of these acts, with the exception of the one passed in 1842;² but even so, the increase in size has by no means kept pace with the population growth of the country. The act of 1842 is noteworthy, not only because it was the only successful effort to reduce the size of the House, but because it was the first in which Congress attempted to curb gerrymandering of congressional districts by the state legislatures. Since 1911 the composition of Congress has been determined by the following act. There is a general feeling that the size of the House should not be further increased (there are now 435 members), but it is very difficult to devise a reapportionment without doing this. Hence no measure has yet (1925) been passed in pursuance of the census of 1920.

SOURCE—37 *U. S. Stat. at Large*, 13.

An Act for the Apportionment of Representatives in Congress among the several States under the Thirteenth Census.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after the third day of March, nineteen hundred and thirteen, the House of Representatives shall be composed of four hundred and thirty-three Members, to be apportioned among the several States as follows:

¹ Act of May 23, 1850. 9 *U. S. Stat. at Large*, 432-433.

² Act of June 25, 1842. 5 *U. S. Stat. at Large*, 491.

Alabama, ten.	Nebraska, six.
Arkansas, seven.	Nevada, one.
California, eleven.	New Hampshire, two.
Colorado, four.	New Jersey, twelve.
Connecticut, five.	New York, forty-three.
Delaware, one.	North Carolina, ten.
Florida, four.	North Dakota, three.
Georgia, twelve.	Ohio, twenty-two.
Idaho, two.	Oklahoma, eight.
Illinois, twenty-seven.	Oregon, three.
Indiana, thirteen.	Pennsylvania, thirty-six.
Iowa, eleven.	Rhode Island, three.
Kansas, eight.	South Carolina, seven.
Kentucky, eleven.	South Dakota, three.
Louisiana, eight.	Tennessee, ten.
Maine, four.	Texas, eighteen.
Maryland, six.	Utah, two.
Massachusetts, sixteen.	Vermont, two.
Michigan, thirteen.	Virginia, ten.
Minnesota, ten.	Washington, five.
Mississippi, eight.	West Virginia, six.
Missouri, sixteen.	Wisconsin, eleven.
Montana, two.	Wyoming, one.

SEC. 2. That if the Territories of Arizona and New Mexico shall become States in the Union before the apportionment of Representatives under the next decennial census they shall have one Representative each, and if one of such Territories shall so become a State, such State shall have one Representative, which Representative or Representatives shall be in addition to the number four hundred and thirty-three, as provided in section one of this Act, and all laws and parts of laws in conflict with this section are to that extent hereby repealed.

SEC. 3. That in each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

SEC. 4. That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this Act; and if there be no change in the number of Representatives from a State, the Representatives thereof shall be elected from the districts now prescribed by law until such State shall be redistricted as herein prescribed.

SEC. 5. That candidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State.

Approved, August 8, 1911.

25. Rules of the House of Representatives

"The rules of the National House of Representatives are not the conception of any one man or set of men; they are not the product of any one Congress or of any combination of Congresses; they are an evolution, the outgrowth of the parliamentary experience, necessities and exigencies of all the hundred years and more of our Congressional life."¹ In the main, the rules are based upon those in the manual which Jefferson drew up for his own guidance as president of the Senate from 1797 to 1801; but this manual, in turn, was based upon the rules of the Continental Congress, the colonial legislatures, and the British Parliament. The following extracts from the present rules cover, among other things, the duties and powers of the Speaker. The foot-notes indicate when the rules were adopted or modified, and form a striking evidence of the gradual evolution of our parliamentary law.

SOURCE—Lehr Fess, *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, 68th Congress, 1st Session (Washington, 1924), 269-407.

¹J. C. Dalzell, "Rules of the House of Representatives," *The Independent*, LXIV, 577 (1908).

RULE I.

DUTIES OF THE SPEAKER.

1. The Speaker shall take the chair on every legislative day precisely at the hour to which the House shall have adjourned at the last sitting, immediately call the Members to order, and on the appearance of a quorum, cause the Journal of the proceedings of the last day's sitting to be read, having previously examined and approved the same.¹

2. He shall preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.²

3. He shall have general control, except as provided by rule or law, of the Hall of the House, and of the corridors and passages and the disposal of the unappropriated rooms in that part of the Capitol assigned to the use of the House, until further order.³

4. He shall sign all acts, addresses, joint resolutions, writs, warrants, and subpoenas of, or issued by order of, the House, and decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.⁴

5. He shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.⁵

6. He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive, or where the

¹ Adopted in 1789 and perfected in 1811 and 1824.

² Adopted in 1789 and amended in 1794.

³ Adopted in 1811 and amended in 1824, 1885, and 1911.

⁴ The portion of this rule relating to decisions on points of order was adopted in 1789 and amended in 1811; and the portion relating to the signing of acts, etc., was adopted in 1794.

⁵ Adopted in 1789, with revision and amendment in 1860 and 1880. In a full House (total membership of 435), tellers are ordered by 44; in Committee of the Whole, by 20.

House is engaged in voting by ballot; and in all cases of a tie vote the question shall be lost.¹

7. He shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond three legislative days: *Provided, however,* That in case of his illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made; and in his absence and omission to make such appointment, the House shall proceed to elect a Speaker pro tempore to act during his absence.²

RULE X.

OF COMMITTEES.

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees, viz: ³ . . .

2. The Speaker shall appoint all select and conference committees which shall be ordered by the House from time to time.⁴

. . . .

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation shall be referred to the committees named in the preceding rule, as follows, viz, subjects relating—

1. To the election of Members—to the respective Committees on Elections.

2. To the revenue and such measures as purport to raise revenue and the bonded debt of the United States—to the Committee on Ways and Means.

3. To appropriation of the revenue for the support of the Government—to the Committee on Appropriations.

4. To judicial proceedings, civil and criminal law—to the Committee on the Judiciary.

5. To banking and currency—to the Committee on Banking and Currency.

¹ Adopted in 1789, with amendment in 1850, and 1911.

² Adopted in 1811, and amended in 1876, and in 1920.

³ Prior to Sixty-second Congress the Speaker appointed standing committees. The present form of this rule was adopted April 5, 1911. [There are now (1925) 55 standing committees and 5 joint committees.—EDITOR.]

⁴ This portion of the rule relating to select committees was adopted in 1880, and the provision relating to conference committees in 1890, although the practice of leaving the appointment of conference committees to the Speaker had existed from the earliest years of the House's history.

6. To coinage, weights, and measures—to the Committee on Coinage, Weights, and Measures.

7. To commerce, life-saving service, and lighthouses, other than appropriations for life-saving service and lighthouses—to the Committee on Interstate and Foreign Commerce. . . .¹

RULE XIV.

OF DECORUM AND DEBATE.

1. When any Member desires to speak or deliver any matter to the House, he shall rise and respectfully address himself to "Mr. Speaker," and, on being recognized, may address the House from any place on the floor or from the Clerk's desk, and shall confine himself to the question under debate, avoiding personality.²

2. When two or more Members rise at once, the Speaker shall name the Member who is first to speak;³ and no Member shall occupy more than one hour in debate on any question in the House or in committee, except as further provided in this rule⁴

7. While the Speaker is putting a question or addressing the House no Member shall walk out of or across the hall, nor, when a Member is speaking, pass between him and the Chair; and during the session of the House no Member shall wear his hat, or remain by the Clerk's desk during the call of the roll or the counting of ballots, or smoke upon the floor of the House; and the Sergeant-at-Arms and Doorkeeper are charged with the strict enforcement of this clause. Neither shall any person be allowed to smoke upon the floor of the House at any time.⁵

RULE XV.

ON CALLS OF THE ROLL AND HOUSE.

. . . .
3. On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum

¹ Here follows the list of the other subjects and the committees to which they must be referred.—EDITOR.

² This rule was adopted in 1880, but was made up, in its main provisions, from older rules, which dated from 1789 and 1811.

³ Adopted in 1789.

⁴ This rule dates from 1841, when the increase of membership had made it necessary to prevent the making of long speeches, which sometimes occupied three or four hours each.

⁵ This rule is made up of provisions adopted in 1789, 1837, 1871, and 1896.

in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business. . . .¹

RULE XVI.

ON MOTIONS, THEIR PRECEDENCE, ETC.

1. Every motion made to the House and entertained by the Speaker shall be reduced to writing on the demand of any Member, and shall be entered on the Journal with the name of the Member making it, unless it is withdrawn the same day.²

2. When a motion has been made, the Speaker shall state it or (if it be in writing) cause it to be read aloud by the Clerk before being debated, and it shall then be in possession of the House, but may be withdrawn at any time before a decision or amendment. . . .³

10. No dilatory motion shall be entertained by the Speaker.⁴

RULE XXII.

OF PETITIONS, MEMORIALS, BILLS, AND RESOLUTIONS.

1. Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, indorsing their names and the reference or disposition to be made thereof; and said petitions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal, with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates for publication in the Record. . . .⁵

Originally members wore their hats during sessions, as in Parliament, and the custom was not abolished until 1837.

¹ This rule was adopted in 1890, but is merely put in form of rule, a principle already established by a decision of the Chair.

² This rule was made up in 1880 of old rules adopted in 1789 and 1806.

³ The provisions of this rule were adopted first in 1789. At that time a second was required for every motion, but in practice this requirement became obsolete very early, and it was dropped from the rule in 1880.

⁴ This rule was adopted in 1890 to make permanent a principle already enunciated in a ruling of the Speaker, who had declared that the "object of a parliamentary body is action, not stoppage of action."

⁵ The rules adopted at the first organization of the House in 1789 provided for the presentation of petitions to the House by the Speaker and members,

3. All other bills, memorials, and resolutions may, in like manner, be delivered, indorsed with the names of Members introducing them, to the Speaker, to be by him referred, and the titles and references thereof and of all bills, resolutions, and documents referred under the rules shall be entered on the Journal and printed in the Record of the next day, and correction in case of error of reference may be made by the House, without debate, in accordance with Rule XI, on any day immediately after the reading of the Journal, by unanimous consent, or on motion of a committee claiming jurisdiction, or on the report of the committee to which the bill has been erroneously referred. . . .¹

RULE XXIII.

OF COMMITTEES OF THE WHOLE HOUSE.

1. In all cases, in forming a Committee of the Whole House, the Speaker shall leave his chair after appointing a Chairman to preside, who shall, in case of disturbance or disorderly conduct in the galleries or lobby, have power to cause the same to be cleared. . . .²

RULE XXVII.

CHANGE OR SUSPENSION OF RULES.

1. No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.

2. All motions to suspend the rules shall, before being sub-

and for the introduction of bills by motion for leave. In 1842 it was found necessary, in order to save time, to provide that petitions and memorials should be filed with the Clerk. In 1870, 1879, and 1887 the practice as to petitions was extended to private bills, at first as to certain classes and later as to all.

¹The rule of 1789 provided that all bills should be introduced on report of a committee or by motion for leave. By various modifications it was first provided that all classes of private bills should be introduced by filing them with the Clerk, and in 1890 this system was by this rule extended to all public bills.

²This rule, adopted in 1880, was made from two older rules dating from 1789 and modified in 1794 to provide for the appointment of the Chairman instead of the inconvenient method of election by the committee.

mitted to the House, be seconded by a majority by tellers, if demanded. . . .

4. A Member may present to the Clerk a motion in writing to discharge a committee from the consideration of a public bill or resolution which has been referred to it thirty days prior thereto (but only one motion may be presented for each bill or resolution). The motion shall be placed in the custody of the Clerk, who shall arrange some convenient place for the signature of Members. A signature may be withdrawn by a Member in writing at any time before the motion is entered on the Journal. When Members to the total number of one hundred and fifty shall have signed the motion it shall be entered on the Journal, printed with the signatures thereto in the Congressional Record, and referred to the Calendar of Motions to Discharge Committees.

On the first and third Mondays of each month, except during the last six days of any session of Congress, immediately after the approval of the Journal, any Member who has signed a motion to discharge which has been on the Calendar at least seven days prior thereto, and seeks recognition, shall be recognized for the purpose of calling up the motion, and the House shall proceed to its consideration in the manner herein provided without intervening motion except one motion to adjourn. Recognition for the motions shall be in the order in which they have been entered.

When the motion shall be called up, the bill or resolution shall be read by title only. After twenty minutes' debate, one-half in favor of the proposition and one-half in opposition thereto, the House shall proceed to vote on the motion to discharge. If the motion prevails, it shall then be in order for any Member who signed the motion to move that the House proceed to the immediate consideration of such bill or resolution (such motion not being debatable), and such motion is hereby made of high privilege; and if it shall be decided in the affirmative, the bill shall be immediately considered under the general rules of the House. Should the House by vote decide against the immediate consideration of such bill or resolution, it shall be referred to its proper calendar and be entitled to the same rights and privileges that it would have had had the committee to whom it was referred duly reported same to the House for its consideration:¹

¹The first discharge rule was adopted June 17, 1910. It was amended during the first session of the Sixty-second Congress and also on February 3, 1912. The present form was adopted January 18, 1924.

26. Preamble and Rules Adopted by a Democratic Caucus

It frequently happens that the party caucus occupies quite as important a place in legislation as does the House of Representatives itself. The burden of work which often falls on the caucus, together with the size of the body, demands that its proceedings be guided by rules which are almost as formal as those of the House. In some respects the Democratic caucus is less rigidly organized than is the Republican; yet when occasion demands, its rules may be applied with equal force. As will be seen from the following statement, the caucus of the minority party is recognized as having a very definite place in legislative procedure; and it is not without significance that the rules of both majority and minority caucuses are printed by the Government Printing Office at public expense.

SOURCE—Copy furnished through the courtesy of the Democratic floor leader, Hon. Finis J. Garrett.

PREAMBLE.

In adopting the following rules for the Democratic Caucus, we affirm and declare that the following cardinal principles should control Democratic action:

- a. In essentials of Democratic principles and doctrine, unity.
- b. In nonessentials, and in all things not involving fidelity to party principles, entire individual independence.
- c. Party alignment only upon matters of party faith or party policy.
- d. Friendly conference and, whenever reasonably possible, party coöperation.

DEMOCRATIC CAUCUS RULES

1. All Democratic Members of the House of Representatives shall be *prima facie* members of the Democratic Caucus.
2. Any member of the Democratic Caucus of the House of

Representatives failing to abide by the rules governing the same shall thereby automatically cease to be a member of the Caucus.

3. Meetings of the Democratic Caucus may be called by the Chairman upon his own motion and shall be called by him whenever requested in writing by twenty-five members of the Caucus or at the request of the Party Leader.

4. A quorum of the Caucus shall consist of a majority of the Democratic Members of the House.

5. General parliamentary law, with such special rules as may be adopted, shall govern the meetings of the Caucus.

6. In the election of officers and in the nomination of candidates for office in the House, a majority of those present and voting shall bind the membership of the Caucus.

7. In deciding upon action in the House involving party policy or principle, a two-thirds vote of those present and voting at a Caucus meeting shall bind all members of the Caucus: *Provided*, The said two-thirds vote is a majority of the full Democratic membership of the House: *And provided further*, That no member shall be bound upon questions involving a construction of the Constitution of the United States or upon which he made contrary pledges to his constituents prior to his election or received contrary instructions by resolutions or platform from his nominating authority.

8. Whenever any member of the Caucus shall determine, by reason of either of the exceptions provided for in the above paragraph, not to be bound by the action of the Caucus on those questions, it shall be his duty, if present, so to advise the Caucus before the adjournment of the meeting, or if not present at the meeting, to promptly notify the Democratic leader in writing, so that the party may be advised before the matter comes to issue upon the floor of the House.

9. That the five-minute rule that governs the House of Representatives shall govern debate in the Democratic Caucus, unless suspended by a vote of the Caucus.

10. No persons, except Democratic Members of the House of Representatives, a Caucus Journal Clerk, and other necessary employees, shall be admitted to the meetings of the Caucus.

11. The Caucus shall keep a journal of its proceedings, which shall be published after each meeting, and the yeas and nays on any question shall, at the desire of one-fifth of those present, be entered on the journal.

27. The House Calendars

The calendars consist of lists of bills awaiting action by the House of Representatives. When a bill is reported out by a committee to which it has been referred, it is placed on one of these calendars until its turn comes for consideration by the House as a whole. There are three principal calendars—one for each of the chief kinds of measures which the House is called upon to consider. The Calendar of the Committee of the Whole House on the State of the Union (usually known as the “Union Calendar”) contains all the public bills which involve appropriation of government funds. If the bill is a public one and does not require the expenditure of money to carry it into effect, it will be placed on the House Calendar. Bills of a private nature are placed on the Private Calendar.

In addition to these three main calendars, there is also what is known as the “Consent Calendar,” on which bills are placed if it is expected that they will go through without objection, *i.e.*, by unanimous consent. All calendars are printed daily; and since more bills are reported each day than can possibly be disposed of, the accumulated lists fill a booklet of considerable size by the end of the session. In this booklet are printed, besides the calendars, lists of Special Orders, matters left over from the preceding days as unfinished business, and bills which have been sent to joint conference committees. In view of the volume of work which nowadays falls to every Congress, these aids to orderly legislative procedure are indispensable. By means of them, likewise, it is possible for a member of the House to arrange to be present when the particular bills in which he is most interested are called up for discussion. The following are typical of the kinds of items on each of the calendars.

SOURCE—Copy furnished through the courtesy of Hon. Morton D. Hull.

CALENDARS
OF THE
HOUSE OF REPRESENTATIVES

Sixty-eighth Congress—Second Session

Saturday, January 31, 1925

SPECIAL ORDERS

HOOR OF MEETING	On motion of Mr. Longworth, by unanimous consent, <i>Ordered</i> , That the hour of meeting on Saturday, January 31, 1925, be 11 o'clock a.m. (<i>Agreed to Jan. 30, 1925.</i>)
PERMISSION TO ADDRESS THE HOUSE	By unanimous consent, <i>Ordered</i> , That Mr. Jones and Mr. Berger be permitted to address the House for 20 minutes each immediately after the disposition of business on the Speaker's table on Saturday, January 31, 1925. (<i>Agreed to Jan. 30, 1925.</i>)
SUNDAY, FEB. 1, 1925	On motion of Mr. Zihlman and Mr. Guyer, by unanimous consent, <i>Ordered</i> , That Sunday, February 1, 1925, be set apart for memorial addresses on the life, character, and public services of the Hon. Sydney E. Mudd, late a Representative from the State of Maryland, and the Hon. Edward C. Little, late a Representative from the State of Kansas. (<i>Agreed to Jan. 14, 1925.</i>) . . .

UNFINISHED BUSINESS

1924	
H. R. Mar. 19.	4 Prevent sale of fraudulent securities in interstate commerce. (<i>Pending in Committee of the Whole House on the state of the Union, Wednesday, Mar. 19, 1924.</i>) (<i>Mr. Madden, chairman.</i>)
H. R. 7358 May 5.	Settlement of railroad labor disputes. (<i>Pending in the Committee of the Whole House on the state of the Union, Monday, May 19, 1924, under discharge calendar rule.</i>) (<i>Mr. Cramton and Mr. Tilson, chairmen.</i>)
1925	
H. R. 11505 Jan. 17.	Independent offices appropriation bill. (<i>Pending in the Committee of the Whole House on the state of the Union, Friday, Jan. 30, 1925.</i>) (<i>Mr. Tilson, chairman.</i>)
H. R. 11066 Jan. 20.	Pend d'Oreille River bridge. (<i>Motion to reconsider entered by Mr. French. Pending in the House Jan. 20, 1925.</i>)
H.J.Res.142 Jan. 28.	Relief of assessment work on mining claims. (<i>Pending in the House, Wednesday, Jan. 28, 1925.</i>) . . .

BILLS IN CONFERENCE

No. and date sent to conference	Brief of title	Conferees		Report filed Report No.	Report agreed to in—	
		House	Senate		House	Senate
1924 S. 114 May 15.	Extend Fourteenth Street through Walter Reed Hospital.	Messrs. Zihlman, Lampert and Blanton.	Messrs. Ball, Jones of Washington, and King.	1924 May 29 896	1924	1924
June 3.	do	do	do	June 3, report read; House insists on its amendments and asks further conference with Senate.		June 4, Senate agrees to further conference.
S. 1765 May 17. Jan. 8.	For the relief of the heirs of Agnes Ingels.	Messrs. Edmonds, Underhill, and Box. (House acts first.)	Messrs. Capper, Spencer, and Caraway. (Senate asks.)	1925 Jan. 28 1296	1925	1925
S. 365 May 17. Jan. 8.	For the relief of Ellen B. Walker.	Messrs. Edmonds, Underhill, and Box. (House acts first.)	Messrs. Capper, Spencer, and Trammell. (Senate asks.)	Jan. 28 1295		
H. R. 71 Dec. 3.	Cowlitz Indian tribe claims.	Messrs. Snyder, Dallinger, and Hayden. (House asks.)	Messrs. Harreld, Curtis, and Kendrick. (Senate acts first.)			

BILLS THROUGH CONFERENCE

No. and date sent to conference	Brief of title	Conferees		Report filed	Report agreed to in—	
		House	Senate	Report No.	House	Senate
1924 H. R. 9559 June 6.	Deficiency ap- propriation, second, 1924.	Messrs. Madden, Anthony, and Byrns of Tennessee.	Messrs. Warren, Curtis, Jones of Washington, Overman, and Harris.	1924 June 7 1019	1924 June 7 12 amend- ments in dis agree- ment.	1924 June 7
June 7.	 do	 do	 do	June 7 1024 Approved Law No. 292.	June 7 Dec. 5, 1924.	Dec. 2 Public
H. R. 6941 June 6.	Omnibus pen- sion bill.	Messrs. Fuller, Elliott, and Cook.	Messrs. Bursum, Fernald, and Walsh of Massa- chusetta.	Dec. 2 1032 Approved Law No. 70.	Dec. 18 Dec. 23, 1924.	Dec. 16 Pri- vate

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1. CALENDAR OF THE COMMITTEE OF THE WHOLE HOUSE
ON THE STATE OF THE UNION

			No.
1924 S. 377 Feb. 7.	Mr. Morrow..... Public Lands. Report No. 166.	An act limiting the creation or extension of forest reserves in New Mexico and Arizona. (<i>Placed on Consent Calendar Feb. 11, 1924.</i>) (<i>Objected to and stricken from Consent Calendar Mar. 3, 1924.</i>) (<i>Placed on Consent Calendar Apr. 11, 1924.</i>) (<i>Passed over without prejudice Apr. 21, 1924.</i>) (<i>Objected to and stricken from Consent Calendar June 2, 1924.</i>)	59
H.J.Res.115 Feb. 8.	Mr. Wright..... Military Affairs. Report No. 173.	A joint resolution approving the action of the Secretary of War in directing the issuance of quartermaster stores for the relief of sufferers from the cyclone at Lagrange and at West Point, Ga., and vicinity, March, 1920. (By Mr. Kahn.) (<i>Placed on Consent Calendar Apr. 23, 1924.</i>) (<i>Objected to and stricken from Consent Calendar June 4, 1924.</i>)	60
H. R. 5559 Feb. 14.	Mr. Haugen..... Agriculture. Report No. 205.	A bill to authorize an appropriation to enable the Secretary of Agriculture to purchase and distribute valuable seeds. (By Mr. Langley.)	69
H. R. 7034 Feb. 20.	Mr. Winslow..... Interstate and Foreign Commerce. Report No. 214.	A bill to establish in the Bureau of Foreign and Domestic Commerce of the Department of Commerce a foreign commerce service of the United States, and for other purposes. (By Mr. Winslow.)	72
H. R. 5352 Feb. 25.	Mr. Langley..... Public Buildings and Grounds. Report No. 230.	A bill to authorize the Secretary of the Treasury to accept a title to a site for the post office at Donora, Pa., which excepts and reserves natural gas and oil underlying the land. (By Mr. Temple.)	81
H. R. 3869 Feb. 26. Mar. 24.	Mr. Jost..... District of Columbia. Report No. 231. (Minority views, pt. 2.)	A bill to amend the insurance laws of the District of Columbia. (By Mr. Edmonds.)	82

2. HOUSE CALENDAR

			No.
1924 H. J. Res. 144 Jan. 18.	Mr. Kahn..... Military Affairs. Report No. 59.	A joint resolution authorizing the Secretary of War to receive, for instruction at the United States Military Academy at West Point, two Siamese subjects, to be designated hereafter by the Government of Siam. (By Mr. Kahn.) (<i>Placed on the Consent Calendar Jan. 19, 1924.</i>) (<i>Objected to and stricken from Consent Calendar Feb. 5, 1924.</i>)	25
H. R. 1 Jan. 19.	Mr. Dyer..... Judiciary. Report No. 71.	A bill to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching. (By Mr. Dyer.)	27
H. R. 762 Jan. 29.	Mr. Haugen..... Agriculture. Report No. 125.	A bill to amend an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, as amended. (By Mr. Haugen.)	50
H. Res. 176 Feb. 19.	Mr. Zihlman..... Labor. Report No. 210.	A resolution directing the Secretary of Labor to make a report on the subject of convict labor in the United States. (By Mr. Zihlman.) (<i>Placed on Consent Calendar Mar. 21, 1924.</i>) (<i>Objected to and stricken from Consent Calendar Apr. 7, 1924.</i>)	76
H. J. Res. 93 Feb. 19. Mar. 3.	Mr. White of Kansas... Election of President, Vice President, and Representatives in Congress. Report No. 211. (Minority views, pt. 2.)	A joint resolution proposing an amendment to the Constitution of the United States. (By Mr. White of Kansas.)	77
H. Res. 155 Mar. 6.	Mr. Graham of Penn- sylvania Judiciary. Report No. 266.	A resolution requesting information from the Attorney General regarding special attorneys appointed during the year 1923, and for other purposes. (By Mr. Howard of Nebraska.)	87

2. HOUSE CALENDAR—Continued

			No.
1924 S. 2209 June 2.	Mr. Graham of Penn- sylvania Judiciary. Report No. 933.	An act to amend sec. 5147 of the Revised Statutes. (<i>Placed on Consent Calendar June 3, 1924.</i> (<i>Objected to and stricken from Consent Calendar June 6, 1924.</i>) (<i>Placed on Consent Calendar Jan. 27, 1925.</i>)	203
S. 2693 June 2.	Mr. Graham of Penn- sylvania Judiciary. Report No. 934.	An act in reference to writs of error. (<i>Placed on Consent Cal- endar June 3, 1924.</i>) (<i>Objected to and stricken from Consent Calendar June 6, 1924.</i>) (<i>Placed on Consent Calendar Jan. 22, 1925.</i>)	204
Rpt.No.1082 Jan. 7.	Mr. Nelson of Wisconsin Elections No. 2. Report No. 1082.	Contested-election case of Henry Frank v. Fiorello H. LaGuardia.	239
H. R. 10690 Jan. 9.	Mr. Hawes..... Interstate and Foreign Commerce. Report No. 1120.	A bill to regulate the interstate transportation of black bass, and for other purposes. (By Mr. Hawes.) (<i>Placed on Con- sent Calendar Jan. 27, 1925.</i>)	266

3. PRIVATE CALENDAR

1924			No.
H. R. 1917 Jan. 28.	Mr. Hawes..... Interstate and Foreign Commerce. Report No. 112.	A bill for the relief of Dr. O. H. Tittmann, former Superintendent of the United States Coast and Geodetic Survey. (By Mr. Newton of Missouri.)	13
H. R. 912 Mar. 13.	Mr. Winter..... War Claims. Report No. 290.	A bill for the relief of John H. Barrett and wife. (By Mr. Burdick.)	57
H. J. Res. 226 Apr. 25.	Mr. Curry..... Territories. Report No. 572.	A joint resolution for the relief of special disbursing agents of the Alaskan Engineering Commission, authorizing the payment of certain claims, and for other purposes, affecting the management of the Alaska railroad. (By Mr. Curry.)	119
H. R. 1445 May 1.	Mr. Woodruff..... Naval Affairs. Report No. 622.	A bill to change the retired status of Chief Pay Clerk R. E. Ames, U. S. N., retired. (By Mr. Johnson of Washington.)	135
H. R. 5456 May 2.	Mr. Vinson of Georgia.. Naval Affairs. Report No. 630.	A bill granting six months' pay to Lucy B. Knox. (By Mr. Linthicum.)	141
H. R. 6442 May 2.	Mr. Hill of Alabama... Military Affairs. Report No. 635.	A bill for the relief of William H. Armstrong. (By Mr. Dalling.)	143
S. 87 May 3.	Mr. Fredericks..... Claims. Report No. 638.	An act for the relief of the Near East Relief (Inc.)	144
H. R. 2921 May 5.	Mr. Andrew..... Naval Affairs. Report No. 662.	A bill for the relief of Paymaster Herbert Elliott Stevens, United States Navy. (By Mr. Andrew.)	164

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4. CONSENT CALENDAR

1924 H. R. 9199 June 6.	Mr. O'Connor of Louisiana Rivers and Harbors. Report No. 926. (Union Calendar No. 372.)	A bill to prevent the pollution by oil of navigable rivers of the United States. (By Mr. Wilson of Louisiana.) (<i>Passed over without prejudice Jan. 5 and Jan. 19, 1925.</i>)	No. 437
S. 1918 June 7.	Mr. Langley..... Public Buildings and Grounds. Report No. 516. (House Calendar No. 148.)	An act relative to officers in charge of public buildings and grounds in the District of Columbia. (<i>Objected to and stricken from Consent Calendar June 4, 1924.</i>) (<i>Passed over without prejudice Jan. 5 and Jan. 19, 1925.</i>)	449
H. R. 8711 Dec. 20.	Mr. Graham of Pennsylvania Judiciary. Report No. 597. (Union Calendar No. 254.)	A bill to authorize the consolidation and coördination of Government purchases, to enlarge the functions of the General Supply Committee and for other purposes. (By Mr. Wood.) (<i>Passed over without prejudice Jan. 21, 1925.</i>)	476
1925 H. R. 8083 Jan. 5.	Mr. Weaver..... Indian Affairs. Report No. 826. (Union Calendar No. 341.)	A bill to designate the Croatan Indians of Robeson and adjoining counties in North Carolina as Cherokee Indians. (By Mr. Lyon.) (<i>Objected to and stricken from Consent Calendar June 5, 1924.</i>) (<i>Passed over without prejudice Jan. 21, 1925.</i>)	484

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28. Lobbies and Lobbyists in Washington

It would be almost impossible to compile a complete list of the interests which are represented in the Washington lobbies. Many of the most effective "legislative agents" work in secret, indirectly, or even from distant cities. It seems probable, however, that there are well over one hundred and fifty of these agencies, of which, however, only about sixty have sufficient financial or voting strength to make them really effective.

"These have formed themselves into what is called the Monday Lunch Club. It is a little-known organization and it does not court publicity, and it has had very little. Yet its members are, perhaps, the most influential group of men in the country. . . . Most of them represent great financial, business, or group interests. One member of this club has an annual salary of \$75,000, and he is worth a good deal more than that to the protected interest he represents. All of them have large expense accounts.

"Most of them are agreeable, engaging fellows, who make friends, are in a position to reciprocate for favors, and know a whole lot about politics. As for intimate knowledge of Congressional and Senatorial personnel, of legislative procedure, of committees and the way they work, of bills and the way they are passed and beaten, there is no one in the country to compare to them."¹

The following list of organizations is by no means complete. In fact, it does not contain some of the more important members of the Monday Club. It is, however, suggestive of the wide scope of interests which are represented at the capital.

SOURCES—*Literary Digest*, LXVII, Oct. 30, 1920, pp. 58-60. Reprinted in the *Congressional Record*, 66th Congress, 3d session, Vol. LX, 2413-2414 (Feb. 2, 1921); W. W. Willoughby and Lindsay Rogers, *Introduction to the Problem of Government* (Garden City, 1921), 493-497.

In a recent article in the *Detroit News*, Jay G. Hayden gives a list of 120 such lobbies, compiled from Washington directories

¹ Frank R. Kent, *The Great Game of Politics* (Garden City, 1923), 271.

and the examination of the tenant lists of a number of the best-known office-buildings in the city. The list is headed by the National Chamber of Commerce, which leads the business organizations. Manufacturers' associations are given first, as follows:

National Association of Manufacturers.
 American Manufacturers' Export Association.
 Institute of American Meat Packers.
 American Automobile Association.
 National Canners' Association.
 Council of American Cotton Manufacturers.
 Founders' Association.
 Lumber Manufacturers' Association.
 Manufacturing Chemists' Association of America.
 Highway Industries Association.
 Interstate Cottonseed Crushers' Association.
 Merchants and Manufacturers' Association.
 Southern Industrial Education Society.
 United States Sugar Manufacturers' Association.
 Western Petroleum Refiners' Association.

Attached to nearly all these bureaus are experts on tax laws, the tariff, labor conditions, and every other thing that may have an immediate or a remote bearing on the interests they represent. Other bureaus, closely related to the foregoing, are the following:

American Association of Engineers.
 American Bankers' Association.
 American Beet Sugar Association.
 American Bureau of Trade Extension.
 American Chemical Society.
 American Mining Congress.
 American Realty Exchange.
 American Association of Real Estate Boards.
 American Automobile Chamber of Commerce.
 National Bureau of Wholesale Lumber Distributors.
 National Industries Conference Board.
 National Merchant Marine Association.
 League of Commission Merchants of the United States.
 National Oil Bureau.
 National Petroleum Association.
 American Patent Law Association. . . .

But perhaps the most thoroughly looked after industry is rail-roading. Chief of the bureaus under this heading is the American Railway Association, which operates the car-service bureau in close coöperation with the Interstate Commerce Commission and which also conducts a vigorous and constant propaganda in behalf of private ownership of the railways.

Attached to this bureau are several of the most capable statisticians and lawyers in the country, who are ever ready to supply information from the railway point of view to any congressional committee or elsewhere as it may be required. The railway asso-

ciation is, in fact, a close rival for the Interstate Commerce Commission in the scope of its public operations.

In the past, local public utilities, such as street-railways, electric lighting and gas plants, were little in touch with the Federal Government. During the war, however, these companies were brought before the War Finance Corporation in the matter of security issues and before the War Labor Board for settlement of their disputes with employees. More recently the passage of the new water-power law, which places the development of the new hydroelectric enterprises under direction of a board composed of Secretaries of the Interior, Agriculture, and War has given these companies another reason for keen interest in the doings of the Government.

Among the utilities organizations already established in Washington are the following:

- American Electric Railway War Board.
- National Association of Railway and Public Utilities Commissions.
- National Committee on Gas and Electric Service.
- National Committee on Public Utilities Conditions.
- Dixie Freight Traffic Association.

There is a growing activity of farm organizations looking to legislation [in] addition to the Farm Bureau, which, with 1,250 members, is now the leading farm organization in America. The societies of farmers with offices in Washington are as follows:

- The American Agricultural Association.
- Eastern Agricultural Bureau.
- Farmers' National Council.
- The Grange.
- Cane Growers' Association.
- National Board of Farm Organizations.
- Texas Cotton Association. . . .

Chief of the labor organizations in addition to the American Federation of Labor, which occupies an entire building of its own, are the organizations of Federal employees and the railroad brotherhoods.

Labor organizations, in addition to the very large number affiliated with the Federation of Labor, which maintain offices in the capital, are as follows:

- National Federation of Federal Employees.
- National Federation of Post-office Clerks.
- National Association of Letter Carriers.
- Brotherhood of Railway Clerks.
- Brotherhood of Railway Signalmen.
- Maintenance of Way Employees.

Plumb Plan League.
 National Women's Trade Union League.
 American Train Dispatchers' Association.

Women's organizations, which are active in promoting legislation before Congress, are by no means confined to the two leading suffrage associations, the National Women's Suffrage Association and the National Woman's Party. Others are as follows:

League of Women Voters.
 Gentlewomen's League.
 Congress of Mothers.
 National W[oman's] C[hristian] T[emperance] U[nion].
 Woman's Section of the Navy League.
 Child Welfare Society.

One of the most conspicuous organizations in Washington is the National Coal Association, which came into being to direct the fight of the coal operators against restrictive legislation, and to represent the industry in its relations with the Federal Coal Administration during the war. This association has been continued in Washington, and it employs a large staff of experts in looking after its special interests in the Government and in propaganda distribution.

The representatives of racial groups and embryo governments seeking favors from the American Government are very much in evidence in the offices of Members of Congress and in the lobbies of the Capitol. Some of these racial organizations are as follows:

Irish National Bureau.
 Poland Information Bureau.
 Lithuanian National Council.
 Lithuanian Information Bureau.
 Bureau of Jewish Statistics.
 National Association of Colored Races.
 Jewish Press Service of America.
 National Committee for Armenian and Syrian Relief.
 British-Canadian Society.
 Friends of the Ukraine.
 Korean Relief Society League.

Associations specially devoted to the suppression of the liquor traffic, in addition to the Anti-Saloon League, are the Board of Temperance of the Methodist Episcopal Church and the National Temperance Bureau.

Organizations of liquor dealers no longer appear as such among the Washington lobbyists. Through paid press agents, however, propaganda in favor of modification of the alcoholic content, as prescribed in the Volstead law, has been recently circulated.

There is little doubt that the liquor lobby will make its appearance before the convening of the new congress.

The number of organizations designed to promote armament and the counter organizations against militarism are the one group which appears to have dwindled as a result of the war. There are several of these organizations still active, however, and most conspicuous among them is the Navy League, which still maintains a large staff in Washington. Others in this classification are as follows:

Peace League of the World.
American Peace Society.
American Union *vs.* Militarism.

The American Legion and the Private Soldiers and Sailors' Legion are the two organizations of war-veterans which maintain headquarters in the capital.

Other organizations, the purpose of which is in some instances disclosed by their title, are as follows:

National Association for Protection of American Rights in Mexico.
National Association for Constitutional Government.
National Civic Service Reform League.
National Committee on Prisons and Prison Labor.
National Committee to Secure Rank for Army Nurses.
National Education Association.
National Industrial Council.
National Committee for Soldiers and Sailors' Relief.
National Negro Business League.
National Popular Government League.
National Committee for District of Columbia Suffrage.
National Patriotic Press.
Rivers and Harbors Congress.
National Voters' League.
National Forestry Association.
American Medical Society.
Christian Science Association.
Consumers' League.
Coöperative League of America.
Free Press Defense League.
League for Preservation of American Independence.
Osteopathic Association.
Physicians' Protective Association.
Prisoners' Relief Society.
Smokeless Coal Operators' Association.
Tuberculosis Association.

In addition to the formally organized bureaus, there are numerous legislative agents who represent more than one special interest.¹

¹ Attention might also be called to the list of propagandist agencies given in Appendix II, *post.*, pp. 380-81. While many of these do not primarily attempt to influence Congress, they frequently bring indirect pressure on the national legislature.—EDITOR.

29. Shopmen's Strike Injunction (1922)

There was no single cause for the shopmen's strike of 1922. It grew out of a complex economic and psychological situation which developed when the railroads were returned to private operation in the post-war reconstruction period. The act which returned the roads to their owners (Esch-Cummins Transportation Act of 1920¹) also created the Railroad Labor Board to preserve industrial peace in the transportation industry. Rising costs of living led to numerous demands for wage increases, and one of the first official acts of the Labor Board was to meet the request of the shop workers, in part, by granting them an increase of thirteen cents an hour. The railroad executives objected that it would be impossible for them to pay this increase, and evaded the decision by contracting out their work to independent companies not covered by it. The unions protested against this practice of "farming out" work and the Labor Board held it to be contrary to the Transportation Act. The roads, however, refused to be bound by the Board's decision, and the practice continued.

The business depression of 1921 led to a demand on the part of the employers for a reduction of wages, and the Labor Board granted two reductions which, together, more than wiped out the post-war increases that had been allowed. A strike vote showed that a majority of the shopmen were in favor of a strike at the time of the first reduction; and when the second was announced (to become effective July 1, 1922) it was manifest that the men could not be induced to accept it. The workers were convinced that the railroad executives were determined to smash the principle of collective bargaining, at any cost. On the other hand, the executives felt that the workers should bear at least some of the losses incident to the depression, and demanded that the unions accept the decision of the Rail-

¹ 41 *U. S. Stat. at Large*, 456.

road Labor Board, which they themselves now agreed to obey. This concession, however, came too late, and in spite of the protest of the Labor Board, the men walked out on July 1, 1922.

Compared with other great railroad strikes, this one was remarkably free from violence. Disorders were only local, and rarely of a serious nature. It soon became apparent that the roads were holding their own in the struggle, and that, although at first there had been some interference with the mails and with interstate commerce, there was no great danger on that score. Nevertheless, on September 1, Attorney-General Daugherty asked Judge J. H. Wilkerson, who had recently been appointed a federal district judge at Chicago, to issue a "blanket injunction" to prevent acts of violence and further interference with interstate transportation. In spite of the bitter protest of the unions, a temporary injunction was issued; and on July 12, 1923, after it had been renewed a number of times, it was made permanent. Apparently the injunction broke the morale of the strikers and hampered the successful conduct of the strike; at all events, the unions attribute to it the fact that they were finally forced to submit. The text of the injunction as renewed on September 25, 1922 (given below) clearly shows the writ's sweeping nature.

SOURCE—Copy furnished through courtesy of Judge J. H. Wilkerson.

UNITED STATES OF AMERICA,
Complainant,

v.

RAILWAY EMPLOYEES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, Bert. M. Jewell, President, J. F. McGrath, Vice President, and John Scott, Secretary and Treasurer; International Brotherhood of Blacksmiths, Drop Forgers and Helpers, etc.,

Defendants.

INJUNCTION WRIT

District Court of the United States,	}	ss.
Northern District of Illinois,		
Eastern Division.		

IN EQUITY NO. 2943

THE UNITED STATES OF AMERICA

To Railway Employees' Department of the American Federation of Labor, and Bert M. Jewell, President, and John Scott, Secretary and Treasurer thereof, in their respective individual and official capacities and as representatives of all of the members of the said Railway Employees' Department of the said American Federation of Labor; [etc.],¹ and each of you, and each and all of your officers, attorneys, servants, agents, associates, members, employees and all persons acting in aid of or in conjunction with you, GREETING:

WHEREAS, It hath been represented to the Judges of our District Court of the United States for the Eastern Division of the Northern District of Illinois, in Chancery sitting, on the part of the United States of America, complainant in its certain bill of complaint, exhibited in our said District Court, on the Chancery side thereof, before the Judges of said Court, against you, the said defendants above named, and each and all of you, to be relieved touching the matters complained of. In which said bill it is stated, among other things, that you are combining and conspiring with others to interfere with, hinder, obstruct and restrain the transportation of passengers and property in interstate commerce and the carriage of the United States mail upon and over the various lines of railroad and systems of transportation of the following named railway companies in the United States of America, to wit:

Alabama & Vicksburg Railway Company,

Vicksburg, Shreveport & Pacific Railway Company.

Alton & Southern Railroad.

Ann Arbor Railroad Company. . . .²

The bill of complaint further alleges that your acts and doings in the premises are contrary to equity and good conscience.

¹ Here follow the names of three national unions and eighty-three system unions and their principal officers.—EDITOR.

² Here follow the names of more than 200 railroads and their subsidiaries.—EDITOR.

And the court having found that in pursuance of said unlawful combination and conspiracy the said defendants above named have by picketing, acts of violence, threats, intimidations, unlawful persuasions, sabotage, injury to and destruction of property, and by other unlawful means, interfered with, hindered, obstructed and restrained interstate trade and commerce and the carriage of the United States mails upon and over the said lines of railroad and systems of transportation aforesaid; and have interfered with, obstructed, hindered and restrained interstate trade and commerce and the carriage of the United States mails thereon and thereover so as to cause great and widespread inconvenience, loss and damage and irreparable injury to the commercial, manufacturing, producing and distributing interests in the United States and to the detriment of the public interest; and unless restrained and enjoined the said defendants will continue such unlawful conduct with further great and widespread inconvenience, loss and damage and irreparable injury as aforesaid; and that the said defendants and each of them are properly before the court and that the ends of justice require that the said defendants and each of them should be temporarily restrained and enjoined as hereinafter ordered; and that the United States of America is without an adequate remedy at law and that said application for a preliminary injunction should be granted. -

And it being ordered that a writ of preliminary injunction issue out of said Court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; We, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said defendants above named, and each and all of you, and each and all of your officers, attorneys, servants, agents, associates, members, employees, and all persons acting in aid of or in conjunction with you, that you DO ABSOLUTELY DESIST AND REFRAIN FROM:

(a) In any manner interfering with, hindering or obstructing said railway companies, or any of them, their officers, agents, servants or employees in the operation of their respective railroads and systems of transportation or the performance of their public duties and obligations in the transportation of passengers and property in interstate commerce and the carriage of the mails, and from in any manner interfering with, hindering or obstructing the officers, agents, servants or employees of said railway companies, or any of them, engaged in the construction, in-

spection, repair, operation or use of trains, locomotives, cars, or other equipment of said railway companies, or any of them, and from preventing or attempting to prevent any person or persons from freely entering into or continuing in the employment of said railway companies, or any of them for the construction, inspection, repair, operation or use of locomotives, cars, rolling stock, or other equipment;

(b) In any manner conspiring, combining, confederating, agreeing and arranging with each other or with any other person or persons, organizations or associations to injure or interfere with or hinder said railway companies, or any of them, in the conduct of their lawful business of transportation of passengers and property in interstate commerce and the carriage of the mails;

(c) Loitering or being unnecessarily in the vicinity of the points and places of ingress or egress of the employees of said railway companies, or any of them, to and from such premises in connection with their said employment, for the purpose of doing any of the things herein prohibited, or aiding, abetting, directing or encouraging any person or persons, organization, or association, by letters, telegrams, telephone, word of mouth, or otherwise, to do any of the acts heretofore described in this and preceding paragraphs; trespassing, entering or going upon the premises of the said railway companies, or any of them, at any place or in the vicinity of any place where the employees of said companies, or any of them, are engaged in constructing, inspecting, overhauling, or repairing locomotives, cars, or other equipment, or where such employees customarily perform such duties or at any other place on the premises of said railway companies, or any of them, except where the public generally are invited to come to transact business with said railway companies as common carriers of passengers and property in interstate commerce;

(d) Inducing or attempting to induce, with intent to further said conspiracy, by the use of threats, violent or abusive language, opprobrious epithets, physical violence or threats thereof, intimidation, displays of force or numbers, jeers, entreaties, argument, persuasion, reward, or otherwise, any person or persons to abandon the employment of said railway companies, or any of them, or to refrain from entering such employment;

(e) Engaging, directing or procuring others to engage in the practice commonly known as picketing, that is to say, assembling or causing to be assembled numbers of the members of said Fed-

erated Shop Crafts, or others in sympathy with them, in the vicinity of where the employees of said railway companies, or any of them, are required to work and perform their duties, or at or near the places of ingress or egress, or along the ways traveled by said employees thereto or therefrom, and by threats, persuasion, jeers, violent or abusive language, violence or threats of violence, taunts, entreaties or argument, or by any similar acts preventing or attempting to prevent any of the employees of said railway companies, or any of them, from entering upon or continuing in their duties as such employees, or so preventing, or attempting to prevent, any other person or persons from entering or continuing in the employment of said railway companies, or any of them; and aiding, abetting, ordering, assisting, directing, or encouraging in any way any person or persons in the commission of any of said acts;

(f) Congregating or maintaining, or directing, aiding, or encouraging the congregating or maintaining upon, at or near any of the yards, shops, depots, terminals, tracks, waylands, roadbeds, or premises of said railway companies, or any of them, of any guards, pickets, or persons to perform any act of guarding, picketing, or patrolling any such yards, shops, depots, terminals or other premises of said railway companies, or any of them; . . .

(g) Doing or causing, or in any manner conspiring, combining, directing, commanding or encouraging the doing or causing the doing by any person or persons of any injury or bodily harm to any of the servants, agents or employees of said railway companies, or any of them; going singly or collectively to the home, abode, or place of residence of any employee of the said railway companies, or any of them, for the purpose of intimidating, threatening, or coercing such employee or member of his family, or in any manner by violence or threats of violence, intimidation, opprobrious epithets, persuasion, or other acts of like character, directed towards any said employee or member of his family, for the purpose of inducing or attempting to induce such employee to refuse to perform his duties as an employee of said railway companies, or any of them; or so attempting to prevent any person or persons from entering the employ of any of said railway companies, or aiding, encouraging, directing, commanding or causing any person or persons so to do;

(h) In any manner directly or indirectly hindering, obstructing, or impeding the operation of any train or trains of said rail-

way companies, or any of them, in the movement and transportation of passengers and property in interstate commerce or in the carriage of the United States mails, or in the performance of any other duty as common carriers. . . .

(i) In any manner, with intent to further said conspiracy by letters, printed or other circulars, telegrams, telephones, word of mouth, oral persuasion or communication, or through interviews published in newspapers, or other similar acts, encouraging, directing or commanding any person, whether a member of any or either of said labor organizations or associations defendant herein, to abandon the employment of said railway companies, or any of them, or to refrain from entering the service of said railway companies, or any of them;

(2) That you the said defendants, Bert M. Jewell, John Scott, . . . and each of you, as officers as aforesaid and as individuals, do absolutely desist and refrain from—

(a) Issuing any instructions, or making any requests, public statements or communications heretofore enjoined and restrained in this writ to any defendant herein, or to any officer or member of any said labor organizations constituting the said Federated Shop Crafts, or to any officer or member of any system federation thereof. . . .

(b) Using, or causing to be used, or consenting to the use of any of the funds or moneys of said labor organizations in aid of or to promote or encourage the doing of any of the matters or things hereinbefore restrained and enjoined;

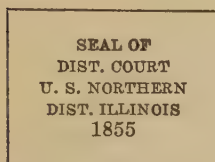
Until this Honorable Court, in Chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

But nothing herein contained shall be construed to prohibit the use of funds or moneys of any of said labor organizations for any lawful purpose, and nothing contained in this order shall be construed to prohibit the expression of an opinion or argument not intended to aid or encourage the doing of any of the acts hereinbefore enjoined, or not calculated to maintain or prolong a conspiracy to restrain interstate commerce or the transportation of the mails.

To all Marshals of the United States to whom this writ may come to execute and return in due form of law.

WITNESS, the Honorable James H. Wilkerson, Judge of the District Court of the United States for the Northern District of Illi-

nois, at Chicago, in said District, this 25th day of September, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States of America the 147th year.



JOHN H. R. JAMAR,
Clerk.

30. The Child Labor Tax Case

Congress first attempted to suppress child labor by prohibiting commodities made by children from passing through interstate commerce. The Supreme Court held an act of this nature void;¹ whereupon an attempt was made to prohibit the employment of children by levying a tax on the profits of persons or corporations using their services.² The act provided for an excise tax of ten per cent. of the net profits of all individuals or companies permitting children under fourteen years of age to work in their establishments. The same tax was to be imposed if children between fourteen and sixteen years of age were required or allowed to work more than eight hours per day. It was expected that this tax would so penalize companies employing children that it would be cheaper to hire adult labor in their place.

The Drexel Furniture Company ignored the act and continued to employ children in its factory in North Carolina. J. W. Bailey, the internal revenue collector, accordingly assessed a tax of \$6,312.74 against it for having permitted children to work during the year 1919. The company paid this impost under protest and subsequently demanded that the collector refund the money. When Bailey refused to comply, the company brought a suit in the Federal District Court for the sum indicated. The

¹ *Hammer v. Dagenhart*, 247 U. S. (1918) 251. An extract from this case is given on pp. 189-97.

² Act of Feb. 24, 1919. 40 *U. S. Stat. at Large*, 1057.

Court held the act of Congress void and ordered the money returned to the company. But the collector of internal revenue appealed the case to the Supreme Court of the United States. The resulting opinion follows:

SOURCE—*Bailey v. Drexel Furniture Company*, 259 U. S. (1922) 20; 42 S. Ct. 449; 66 L. Ed. 817.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court. . . .

The law is attacked on the ground that it is a regulation of the employment of child labor in the States—an exclusively state function under the Federal Constitution and within the reservations of the Tenth Amendment. It is defended on the ground that it is a mere excise tax levied by the Congress of the United States under its broad power of taxation conferred by § 8, Article I, of the Federal Constitution. We must construe the law and interpret the intent and meaning of Congress from the language of the act. The words are to be given their ordinary meaning unless the context shows that they are differently used. Does this law impose a tax with only that incidental restraint and regulation which a tax must inevitably involve? Or does it regulate by the use of the so-called tax as a penalty? If a tax, it is clearly an excise. If it were an excise on a commodity or other thing of value we might not be permitted under previous decisions of this court to infer solely from its heavy burden that the act intends a prohibition instead of a tax. But this act is more. It provides a heavy exaction for a departure from a detailed and specified course of conduct in business. That course of business is that employers shall employ in mines and quarries, children of an age greater than sixteen years; in mills and factories, children of an age greater than fourteen years, and shall prevent children of less than sixteen years in mills and factories from working more than eight hours a day or six days in the week. If an employer departs from this prescribed course of business, he is to pay the Government one-tenth of his entire net income in the business for a full year. The amount is not to be proportioned in any degree to the extent or frequency of the departures, but is to be paid by the employer in full measure whether he employs five hundred children for a year, or employs only one for a day. Moreover, if he does not know the child is within the named age limit, he is not to pay; that is to say, it is only where he knowingly departs from the prescribed course that payment is to be

exacted. Scienter is associated with penalties not with taxes. The employer's factory is to be subject to inspection at any time not only by the taxing officers of the Treasury, the Department normally charged with the collection of taxes, but also by the Secretary of Labor and his subordinates whose normal function is the advancement and protection of the welfare of the workers. In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?

It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not entrusted to Congress but left or committed by the supreme law of the land to the control of the States. We can not avoid the duty even though it require us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half.

Out of a proper respect for the acts of a coördinate branch of the Government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting from the weight of the tax it was intended to destroy its subject. But, in the act before us, the presumption of validity cannot prevail, because proof of the contrary is found on the very face of its provisions. Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word "tax" would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States.

The difference between a tax and a penalty is sometimes difficult to define and yet the consequences of the distinction in the required method of their collection often are important. Where the sovereign enacting the law has power to impose both tax and penalty the difference between revenue production and mere regulation may be immaterial, but not so when one sovereign can impose a tax only, and the power of regulation rests in another. Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment. Such is the case in the law before us. Although Congress does not invalidate the contract of employment or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing and imposing its principal consequence on those who transgress its standard. . . .

But it is pressed upon us that this court has gone so far in sustaining taxing measures the effect or tendency of which was to accomplish purposes not directly within congressional power that we are bound by authority to maintain this law.

The first of these is *Veazie Bank v. Fenno*, 8 Wall. 533. In that case, the validity of a law which increased a tax on the circulating notes of persons and state banks from one per centum to ten per centum was in question. The main question was whether this was a direct tax to be apportioned among the several States "according to their respective numbers." This was answered in the negative. The second objection was stated by the court:

"It is insisted, however, that the tax in the case before us is excessive and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is, therefore, beyond the constitutional power of Congress."

To this the court answered (p. 548):

"The first answer to this is that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of

the legislature is not to the courts, but to the people by whom its members are elected. So if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution."

It will be observed that the sole objection to the tax there was its excessive character. Nothing else appeared on the face of the act. It was an increase of a tax admittedly legal to a higher rate and that was all. There were no elaborate specifications on the face of the act, as here, indicating the purpose to regulate matters of state concern and jurisdiction through an exaction so applied as to give it the qualities of a penalty for violation of law rather than a tax.

It should be noted, too, that the court, speaking of the extent of the taxing power, used these cautionary words (p. 541):

"There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution."

But more than this, what was charged to be the object of the excessive tax was within the congressional authority, as appears from the second answer which the court gave to the objection. After having pointed out the legitimate means taken by Congress to secure a national medium or currency, the court said (p. 549):

"Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile."

The next case is that of *McCray v. United States*, 195 U. S. 27. That, like the *Veazie Bank Case*, was the increase of an excise tax upon a subject properly taxable in which the taxpayers claimed that the tax had become invalid because the increase was excessive. It was a tax on oleomargarine, a substitute for butter. The

tax on the white oleomargarine was one-quarter of a cent a pound, and on the yellow oleomargarine was first two cents and was then by the act in question increased to ten cents per pound. This court held that the discretion of Congress in the exercise of its constitutional powers to levy excise taxes could not be controlled or limited by the courts because the latter might deem the incidence of the tax oppressive or even destructive. It was the same principle as that applied in the *Veazie Bank Case*. This was that Congress in selecting its subjects for taxation might impose the burden where and as it would and that a motive disclosed in its selection to discourage sale or manufacture of an article by a higher tax than on some other did not invalidate the tax. In neither of these cases did the law objected to show on its face as does the law before us the detailed specifications of a regulation of a state concern and business with a heavy exaction to promote the efficacy of such regulation.

The third case is that of *Flint v. Stone Tracy Co.*, 220 U. S. 107. It involved the validity of an excise tax levied on the doing of business by all corporations, joint stock companies, associations organized for profit having a capital stock represented by shares, and insurance companies, and measured the excise by the net income of the corporations. There was not in that case the slightest doubt that the tax was a tax, and a tax for revenue, but it was attacked on the ground that such a tax could be made excessive and thus used by Congress to destroy the existence of state corporations. To this, this court gave the same answer as in the *Veazie Bank* and *McCray Cases*. It is not so strong an authority for the Government's contention as they are.

The fourth case is *United States v. Doremus*, 249 U. S. 86. That involved the validity of the Narcotic Drug Act, 38 Stat. 785, which imposed a special tax on the manufacture, importation and sale or gift of opium or coca leaves or their compounds or derivatives. It required every person subject to the special tax to register with the Collector of Internal Revenue his name and place of business and forbade him to sell except upon the written order of the person to whom the sale was made on a form prescribed by the Commissioner of Internal Revenue. The vendor was required to keep the order for two years, and the purchaser to keep a duplicate for the same time and both were to be subject to official inspection. Similar requirements were made as to sales upon prescriptions of a physician and as to the dispensing of such drugs directly

to a patient by a physician. The validity of a special tax in the nature of an excise tax on the manufacture, importation and sale of such drugs was, of course, unquestioned. The provisions for subjecting the sale and distribution of the drugs to official supervision and inspection were held to have a reasonable relation to the enforcement of the tax and were therefore held valid.

The court said that the act could not be declared invalid just because another motive than taxation, not shown on the face of the act, might have contributed to its passage. This case does not militate against the conclusion we have reached in respect of the law now before us. The court, there, made manifest its view that the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax and not solely to the achievement of some other purpose plainly within state power.

For the reasons given, we must hold the Child Labor Tax Law invalid and the judgment of the District Court is

Affirmed.

MR. JUSTICE CLARKE dissents.

31. The Budget System and Economy

It would be difficult to overestimate the importance of the Budget and Accounting Act of 1921.¹ The Bureau of the Budget which it established has been able to coördinate the requests of the various departments into a unified spending policy for the consideration of Congress, and due to its direct responsibility to the chief executive, it has become a powerful agency for enforcing the President's financial policy on the inferior executive officers. The result has been that during the first four years of its activity, it has been able to show enormous economies in governmental expenditures. It would be a mistake, however, to attribute the success of the budget system solely to the mechanism established by the act of 1921. No type of machinery can automatically insure an efficient and economical administration, unless it has the support and coöperation of the executive officials themselves.

One of the methods for securing this coöperation is the

¹ 42 U. S. Stat. at Large, 20.

semi-annual meeting of the "Business Organization of the Government." This includes the members of the President's cabinet and the heads of the independent establishments of the government; there are likewise representatives from almost every important bureau and division of the federal service. Soldiers and sailors, scientists and statisticians, treasury experts, diplomats, architects, tariff experts, librarians, jurists, astronomers, engineers, and educators meet with representatives of the postal service, the Office of Indian Affairs, the Immigration Bureau, the Government Printing Office, the Smithsonian Institute, and the agencies for the protection of the public health. The President of the United States presides and in a short talk outlines the executive policy in regard to appropriations. His address is followed by a longer one by the Director of the Bureau of the Budget in which the means of putting the executive policy into effect are usually discussed in greater detail. The following extracts from one of these addresses by Director H. M. Lord illustrates the general nature and purpose of these meetings. Incidentally, the passage also contains an excellent account of some of the methods which have been used to secure economies in the administration of the government's activities.

SOURCE—*Address of the President of the United States and the Director of the Bureau of the Budget at the Sixth Regular Meeting of the Business Organization of the Government, January 21, 1924 (Washington, 1924), 5-21.*

MR. PRESIDENT AND MEMBERS OF THE BUSINESS ORGANIZATION OF THE GOVERNMENT: I always approach this semiannual, mid-year meeting of the Business Organization of the Government with some little concern and no little trepidation. The annual meeting, which occurs shortly after or near the close of the fiscal year, causes no such apprehension. At that time you have a year of accomplishment to your credit. Appropriations have been made, and you know the worst and the best. If not satisfied with the funds appropriated, you may have become reconciled; the passage of time may have assuaged your grief and dulled your disappointment over the postponement, restriction, or elimination of cherished projects that you may have considered of pressing im-

portance and of vital necessity. You may perchance in that more temperate mood have a kind, considerate, and charitable thought for the Director of the Bureau of the Budget and all his house.

Conditions are very different at these semiannual meetings which follow so closely on the heels of the transmission of the annual Budget to Congress. This Budget embodies in its restricted estimates the disappointments . . . which the mellowing hand of time has not had opportunity to soften or soothe. The feeling of dissatisfaction with, if not resentment against, the Bureau of the Budget finds expression at this time in annual reports, critical comment, and complaints, more or less bitter. . . . The Director of the Bureau of the Budget . . . may not be openly charged with stifling necessary Federal activities, but the inference is obvious. In a Booker Washington story a colored brother was charged with the duty of procuring a turkey for a patron. When the bird was delivered the customer complained that instead of a tame turkey as had been ordered a wild turkey was furnished, for the bird was full of shot. Said the colored man: "Dat's a tame tukkey, all right. Dem shots was meant for me."

It has been said by some one that the Director of the Bureau of the Budget in carrying out the executive policy of retrenchment should have the hide of a rhinoceros and a backbone of steel. He should also have a heart of flint to withstand the appeals of eloquent advocates of great national projects urging favorable recommendation to the President for colossal sums for reforestation, good roads, rivers and harbors, public buildings, reclamation, research, and the like. The Director of the Bureau of the Budget yields in point of national pride and public spirit to no person in the Federal service or out of it. He has vision to see the broad slopes of our denuded hills and mountains again clothed in the glorious majesty of stately forests; he has vision to see the hamlets, villages, towns, and cities of our country bound together by broad ribbons of faultless highway, over which rumble the ponderous trucks of commerce and over which speed the limousines of the rich and the flivvers of the more moderately circumstanced; he has vision to see imposing public buildings adorning the public squares of our populous communities; he has vision to see our bays and rivers bearing unvexed on their placid bosoms the commerce of this and other countries, pointing to the last word in river and harbor construction; he has vision to see every last arid foot of land converted into an Eden of productive fertility;

he has vision to see this wonderful country by the expenditure of Federal billions transformed into a Utopia of comfort, convenience, and beauty; he has vision to see all this, and then some one hands him a Treasury statement and he wakes up. These important Government projects must be provided for, but only to the extent that the condition of the Treasury and the plight of the taxpayers will warrant.

I am not speaking in any spirit of complaint or criticism. In the consideration of estimates the sympathy of the Director of the Bureau of the Budget is generally with the executives, who in most cases support their requests for appropriations so ably and earnestly as to challenge his admiration. He faces across the table experts from the many bureaus of the Government—able, trained men, loyal to the particular Government interests they represent, and convinced of the supreme importance and prime necessity of the services and projects for which they so eloquently plead. In this financial arena he encounters personal friends with whose great abilities, professional and scientific attainments, and devotion to duty he is thoroughly familiar. To deny their requests, to chill their enthusiasm, and to defeat their cherished plans, which the executive policy of economy at times demands, is not a pleasant duty.

Some months ago I made the statement that when the Director of the Bureau of the Budget became popular he should be immediately dismissed. My experiences the past few months have confirmed the wisdom of that conclusion. . . . I have stated often and emphasized repeatedly that the Director of the Bureau of the Budget has no financial policy of his own. He endeavors, impartially and impersonally, to have reflected in the Budget the financial policy of the Chief Executive, which should be and must be the policy of the personnel who make up the administration, from the char-women who mop the office floors to the distinguished statesmen who sit in august dignity around the Cabinet table. If in applying that executive policy he does not have due regard to the rights of all Federal agencies, it is from fault of judgment and never from lack of intent to be fair and just. He earnestly desires the friendly regard of the services, but if he cannot have their friendship he must have their respect.

At the last regular annual meeting of the Business Organization of the Government President Harding outlined his fiscal program for 1925. . . . President Coolidge continued this program in

full force and effect with all its drastic requirements. Inspired by his definite, decisive, and courageous attitude, and with the expressed desire of our former loved leader as an added incentive, work on the 1925 estimates began. The Director of the Bureau of the Budget had no illusions as to the size of the contract. . . . He had no difficulty, however, in waxing enthusiastic over this job. He felt that it must stir the blood of every person in the Government service. In his mind's eye he saw the makers of estimates exultantly and triumphantly paring down requests for appropriations in joyful fulfillment of the wishes of the wise leader who had gone and the masterful leader who had come. It was a dream! But confident and unafraid the Director of the Bureau of the Budget called on the various departments and establishments to submit preliminary estimates not later than August 1. These preliminary estimates play an important part in Budget procedure, giving the Bureau of the Budget a picture of the financial intentions of the executive agencies a month and a half before the regular estimates are submitted in compliance with law.

August 1 arrived and so did the preliminary estimates. When the Director of the Bureau of the Budget came to, he found that the estimates submitted called for the robust total of \$1,964,202,-887.42 for all purposes except the public debt and Postal Service. The departments and establishments of the Government after a month and a half of consideration and study of the President's program asked for \$264,000,000 more than the maximum fixed by the Chief Executive. Of the 43 departments and independent establishments of the Government only 4 requested less funds for 1925 than they have for 1924. On this roll of honor we find the Interstate Commerce Commission, the Shipping Board, the United States Veterans' Bureau, and the Department of the Interior. I extend my congratulations and most distinguished consideration to these medal winners on the stricken field of estimates.

To get rid of this excess of \$264,000,000 was the immediate problem that faced the Bureau of the Budget. It would have been a simple matter to cut at random down the long line of Government agencies and reach the maximum established by the President. Such a procedure, however, would probably cripple and destroy important government activities. Reductions in appropriations call for greater care and discrimination than increases, inasmuch as to cripple an important service by the withholding of necessary operating funds is more harmful than if such an im-

portant activity were overfinanced. The method followed to bring the preliminary estimates to earth and to harmonize them with the executive program was scientific and effective. The preliminary estimate of each department and establishment was considered item by item in the light of all information available.

The Bureau of the Budget with its trained and experienced investigators for each Government activity brings to bear upon the estimates a wealth of information and a familiarity with services, projects, and purposes that guarantee a defensible and dependable result. I say very frankly, however, that in the consideration of these preliminary estimates where there was doubt of the wisdom of a contemplated reduction the doubt was always resolved in favor of the Treasury and the reduction made, for the reason that the estimating agencies would later have opportunity to show that such reduction was unwise. It is no child's play to make a careful study of the 4,000 appropriation items in the annual Budget, with their almost innumerable subdivisions, and to give each item the scrutiny it deserves. That careful, painstaking study, nevertheless, was given each individual item, and a reduced total was reached of \$1,657,785,850.04—an amount well within the President's \$1,700,000,000 and \$306,417,037.38 below the total preliminary estimates submitted for all purposes exclusive of the debt and postal activities.

Each department was then allocated the total amount—lump sum—to which its original estimate had been reduced and each department was directed by the President to distribute that amount in such manner as best to provide for its activities. The letter making this allocation follows:

I have the honor to advise you that the President has approved the allocation to your office of \$. as a tentative maximum amount of the total of your estimates for the financial year ending June 30, 1925.

Your regular estimate for the fiscal year 1925, to be submitted on or before September 15, 1923, and prepared in accordance with the instructions of July 30, 1923, should not, therefore, exceed in their total the amount above stated.

If your estimates thus prepared do not in your opinion meet the absolutely necessary requirements of your office they will be accompanied by a supplemental statement showing the

additional amount which you believe will be required, allocated to appropriation titles, and setting forth the necessity therefor. In stating the necessity for such increase it is requested that you indicate the consequences which would result from failure to secure the additional amount that you recommend.

This procedure contemplates that the departments and establishments remake their estimates as though not a penny would be available in addition to the restricted amount allocated. No information was given to show how that amount was determined by the Bureau of the Budget. It was understood, however, that if the amount allowed proved insufficient opportunity would be afforded to justify increases. This method placed the burden of proof on the shoulders of the Government bureaus, where it belongs. The spirit of the plan lies in the expectation that the executives will, with their limited estimates, provide for the more necessary and vital things and let the reductions fall where they will work the least inconvenience and damage. This principle is both scientific and historic. The story of the prince and the painter is well known. To determine the finest piece in the artist's collection the prince had some of his retainers raise the cry of "Fire" in the neighborhood. At the first alarm the artist seized his most treasured possession, and thus the prince located the gem of the collection.

This is the scientific principle applied by the Bureau of the Budget to the agencies of the Government to make them disclose their priorities. In most cases it worked admirably; in others not so well. Some of the departments allocated the reductions to items that under the law could not be reduced, or took advantage of other methods which tended to defeat the very purpose of the procedure. It was as if the artist at the first alarm had said to the prince: "The fire must be up the street somewhere. Let's sit in the window and see the crowd go by." This, of course, made more difficult the already difficult task of the Bureau of the Budget, but a few new troubles more or less do not disturb the Budget office. We have found, in the words of Lloyd George, that a change of troubles is as good as a vacation.

The estimates, modified in accordance with the instructions of the President, were returned to the Bureau of the Budget September 15, and from that date until well into November con-

tinuous hearings were held. Representatives of the executive departments were given full and free opportunity to state their needs and justify their requests for funds. The personnel of the Bureau of the Budget gave the most intensive study to the estimates in order that the various agencies of the Government might have sufficient funds for proper functioning. At the same time effort was made to cut out every penny that was not absolutely needed. The dominant spirit of this strenuous season was that full justice be done every activity—no matter how large, no matter how small—and that a budget be prepared for submission to the President that could be justified, not only from the standpoint of economy but from the standpoint of adequate provision for efficient service. The spirit of the President's instructions required that the Budget reflect these two important factors—economy in spending and efficiency in operation. The result of this effort is the annual Budget for 1925 now before Congress with a total estimate of \$1,645,791,971.06 for all purposes, exclusive of the public debt and the postal estimates. This is \$318,410,916.36 less than the amount requested in the preliminary estimates. Including interest on the public debt and the reduction of the debt, the total carried in the Budget is \$3,018,069,946.06, which approximates very closely the three billion mark which President Harding had as a goal. . . .

In our efforts to reduce expenditures we face always that hopeless two-thirds of the total annual expenditure not subject to administrative control. We start out hopefully with the total estimated expenditure for this year of \$3,565,000,000 as given in the Budget. It's an extraordinary amount. Seems as though we should be able to save many millions out of its generous total. That is the way the average taxpayer looks at it. We take that three billion and a half apart to see how it is constituted. First we find \$940,000,000 for interest on the public debt. We cannot touch that, and we sadly lay it aside. Then we find nearly \$512,000,000 applied to reduction of the public debt, a large proportion of which is required by law under the provisions of the cumulative sinking fund act. We put that aside in a subdued state of mind because it cannot well be modified. Then we discover a total of \$688,000,000 for the veterans of three wars and the dependents of four. We would not touch that if we could—we glory in it—and we pass on. Then as we search the thousand and more pages of the Budget we find other millions in indefinite

and permanent appropriations and in other funds which are not susceptible of modification. We find that we are almost as badly off as the darkey who applied for credit at the country store. The proprietor wanted to know "how come" he wanted credit when he had had a good crop of cotton.

"Boss, it was dis way. De ducks got about all dat cotton crop."

"What do you mean, the ducks got it?"

"Well," explained the old man, "I sent dat cotton up to Memphis, and dey 'ducks so much for freight, 'ducks so much for storage, 'ducks so much for taxes, 'ducks so much for commission—yes, sah, de 'ducks done got 'bout all dat cotton."

After we have deducted from the estimated total expenditure of this current fiscal year the grand total of amounts which cannot be modified and must fairly be regarded as constants, or fixed charges, we have something less than a billion and a half dollars subject to reduction and available for the practice of economy. But we are attacking that billion and a half with our two most trenchant weapons, coöperation and coördination, which spell teamwork and mean economy. . . .

Fifty-five million pounds of paper are used annually by the Government Printing Office. Contracts for the purchase of this paper formerly provided for delivery by the contractor to the Government Printing Office warehouses. On recommendation of the Chief Coördinator's office the contracts now provide for delivery at the railroad freight stations in Washington. From there the paper is transported by Federal trucks to the warehouses, at a net saving of \$25,000 annually after deducting the cost of operating the Federal trucks.

Again this year, through the efforts of the area coördinators, post-office trucks were reinforced by other Federal trucks during the Christmas mail delivery. Savings last year from this piece of teamwork were \$60,408.19 after deducting the cost of operation of the trucks, and approximately the same amount was saved in the same way this year. . . .

The laundry at the Fort Bidwell Indian School, Calif., was burned. The area coördinator in San Francisco located surplus laundry equipment belonging to the Army at Camp Lewis, Wash. He found a surplus boiler belonging to the Navy at Mare Island, Calif. These articles were transferred to the school and purchase in the open market obviated. . . .

Through the efforts of the Federal Traffic Board traffic organizations have been installed in all Government departments where the amount of traffic warrants such action. To-day 12 traffic agencies, operating under 12 traffic managers, are the healthy, vigorous successors to more than 100 heterogeneous organizations that formerly were responsible—I might almost say irresponsible—for transportation of the great bulk of Government supplies and personnel. It has been a long, tedious, and trying task, beset with many discouragements. The result, however, amply justifies the work. . . .

Here's a case in hand. The traffic representative of one of the departments shipped 118 packages from Baltimore to Chicago. These packages were described as "miscellaneous hospital supplies." The carrier, not being properly advised of the contents, applied a rate which called for a charge of \$205, which was paid. The General Accounting Office, which was alive to the situation, even though the shipper was not, found these packages contained chipped soap, which called for a lower classification and rate, and warranted a payment of only \$64.25 instead of the \$205 which had been paid. The difference was collected from the carrier. Carelessness of the shipper in this case was responsible for a rate more than 300 per cent too high. Of course, the actual amount involved was small, but the possibilities for loss from this careless way of doing business are not small. The Government cannot afford to retain on its pay roll expensive servants like the shipper of that soap, and will not retain such employees on its pay roll. . . .

The State Department was spending in March, 1920, for telegraph and cable tolls \$51,000 a month. This rate of expenditure meant a deficiency. Notice was immediately sent out to economize. This notice was supplemented by a report showing the cost of telegrams originating in the various offices, which was sent to the offices concerned to arouse competition in cutting down the expense. It worked. Starting in March with \$51,000, telegraphic expense dropped to \$37,000 in April, to \$25,000 in May, \$25,000 in June, and so at about that rate until in the succeeding January it fell to approximately \$21,000. Competition in economy is a most commendable sport, and I hope it may be initiated all through the service. It is one game in which every earnest participant is bound to win. . . .

The Federal Specifications Board has promulgated 114 stand-

ard specifications and has 60 technical committees at work covering a large portion of the field of commodities purchased by the Government. . . .

These standard specifications have saved the Government already a great deal of money. Take the case of varnish. A commercial varnish costing \$4.37 a gallon was in almost universal use by the Federal Government. A varnish prepared according to the standard specifications of the Federal Specifications Board, costing \$1.44 a gallon, has been found a most satisfactory and suitable substitute. The Navy estimates a saving of \$90,000 annually by the use of this just-as-good varnish.

Municipalities and States—15 of the latter—are hungry for these Federal specifications and adopt them as soon as they are promulgated, while certain foreign countries—among them Czechoslovakia, England, and Australia—are also using them. . . .

In our discussion of needed improvements in the Federal service we must not give the impression that Government people are incompetent and incapable, for it is not warranted. Persons outside the Federal service, interested in its betterment, properly anxious to see waste of Government resources eliminated, are forever holding up for our delectation and possible profit operators in commercial life and methods of outside business as worthy of all emulation. We are urged to secure men from civil business and urged to adopt commercial practices for the Federal Government with promise and expectation that in this way we could develop a wasteless, frictionless organization that would function with 100 per cent efficiency. While we welcome gratefully and thankfully all well intended recommendations, and while we appreciate the transcendent ability of great captains of commercial industry, while we admire the wondrous talents of princes of civil administration, and while we concede the acumen and surpassing wisdom of great wizards of finance in civil life, it is well to have in mind that outside business is not 100 per cent efficient. The bankruptcy courts do not sustain that contention. We have in the Federal service administrators as able, business men as talented, personnel, scientific and professional, as well equipped, as well informed, and as well trained as can be found in any organization doing business in this troubled world. . . .

32. *Gibbons v. Ogden*: The Power of Congress Over Interstate Commerce

As soon as it was assured that the steam-boat was destined to become a practical means of navigation, there was a scramble for concessions giving certain individuals the exclusive right to use the device within specified regions. Many of the states, by legislative act, conferred monopolies of this character upon certain of their citizens. Laws of this nature were passed by New York, Massachusetts, New Hampshire, Pennsylvania, Tennessee, Georgia, Connecticut, and New Jersey. The New York acts ¹ gave Robert Livingston and Robert Fulton the exclusive privilege of operating steam-boats within the boundaries of the state until 1838 and authorized the courts to issue an injunction to prevent anyone from infringing upon this right. Under these measures it was illegal for a citizen of New Jersey to operate a ferry to New York City; and consequently the New Jersey legislature retaliated by passing an act giving any person damages, with triple the costs, if the New York courts enjoined him from operating a steam-boat to New York.

Thomas Gibbons was a citizen of New Jersey and had secured a license from the federal government to operate a ferry from Elizabethtown, New Jersey, to New York City.² In the meanwhile, Livingston and Fulton had sold their rights under the New York acts to Aaron Ogden. As soon as Gibbons started running his ferry to New York City, Ogden petitioned the New York courts to grant an injunction to protect the rights which he had purchased. The state courts issued the desired decree, enjoining Gibbons from operating the ferry; but he took an appeal to the Supreme Court of the United States, on the ground that the federal statute was superior to the law of the state.

¹ Acts of Mar. 27, 1798; April 5, 1803; April 11, 1808.

² Under the provisions of the Act of Feb. 18, 1793, c. 8; 1 *U. S. Stat. at Large*, 305.

SOURCE—*Gibbons v. Ogden*, 9 Wheaton (U. S. 1824) 1; 6 L. Ed. 23.

Mr. Chief Justice MARSHALL delivered the opinion of the Court. . . .

The appellant contends that this decree is erroneous, because the laws which purport to give the exclusive privilege it sustains, are repugnant to the Constitution and laws of the United States. . . .

The words are, "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The subject to be regulated is commerce; and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce," to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it.

The convention must have used the word in that sense, because all have understood it in that sense; and the attempt to restrict it comes too late. . . .

The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation, is as expressly granted, as if that term had been added to the word "commerce."

To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations, and among the several States, and with Indian tribes." It has, we believe, been universally admitted, that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other, to which this power does not extend. It has been truly said, that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it.

The subject to which the power is next applied, is to commerce "among the several States." The word "among" means intermingled with. A thing which is among others, is intermingled with them. Commerce among the States, cannot stop at the external boundary line of each State, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made, had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we

regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power, if it could not pass those lines. The commerce of the United States with foreign nations, is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction, pass through the interior of almost every State in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised whenever the subject exists. If it exists within the States, if a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State.

This principle is, if possible, still more clear, when applied to commerce "among the several States." They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other States lie between them. What is commerce "among" them; and how is it to be conducted? Can a trading expedition between two adjoining States, commence and terminate outside of each? And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the States, must of necessity, be commerce with the States. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a State. The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several States. . . .

If, as our whole course of legislation on this subject shows, the power of Congress has been universally understood in America,

to comprehend navigation, it is a very persuasive, if not a conclusive argument, to prove that the construction is correct; and, if it be correct, no clear distinction is perceived between the power to regulate vessels employed in transporting men for hire, and property for hire. The subject is transferred to Congress, and no exception to the grant can be admitted, which is not proved by the words or the nature of the thing. A coasting vessel employed in the transportation of passengers, is as much a portion of the American marine, as one employed in the transportation of a cargo; and no reason is perceived why such vessel should be withdrawn from the regulating power of that government, which has been thought best fitted for the purpose generally. The provisions of the law respecting native seamen, and respecting ownership, are as applicable to vessels carrying men, as to vessels carrying manufactures; and no reason is perceived why the power over the subject should not be placed in the same hands. The argument urged at the bar, rests on the foundation, that the power of Congress does not extend to navigation, as a branch of commerce, and can only be applied to that subject incidentally and occasionally. But if that foundation be removed, we must show some plain, intelligible distinction, supported by the constitution, or by reason, for discriminating between the power of Congress over vessels employed in navigating the same seas. We can perceive no such distinction.

If we refer to the constitution, the inference to be drawn from it is rather against the distinction. The section which restrains Congress from prohibiting the migration or importation of such persons as any of the States may think proper to admit, until the year 1808, has always been considered as an exception from the power to regulate commerce, and certainly seems to class migration with importation. Migration applies as appropriately to voluntary, as importation does to involuntary, arrivals; and, so far as an exception from a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulation of vessels employed in transporting men, who pass from place to place voluntarily, and to those who pass involuntarily. . . .

If a real difference could be admitted to exist between vessels carrying passengers and others, it has already been observed, that there is no fact in this case which can bring up that ques-

tion. And, if the occupation of steam boats be a matter of such general notoriety, that the Court may be presumed to know it, although not specially informed by the record, then we deny that the transportation of passengers is their exclusive occupation. It is a matter of general history, that, in our western waters, their principal employment is the transportation of merchandise; and all know, that in the waters of the Atlantic they are frequently so employed.

But all inquiry into this subject seems to the Court to be put completely at rest, by the act already mentioned, entitled, "An act for the enrolling and licensing of steam boats."

This act authorizes a steam boat employed, or intended to be employed, only in a river or bay of the United States, owned wholly or in part by an alien, resident within the United States, to be enrolled and licensed as if the same belonged to a citizen of the United States.

This act demonstrates the opinion of Congress, that steam-boats may be enrolled and licensed, in common with vessels using sails. They are, of course, entitled to the same privileges, and can no more be restrained from navigating waters, and entering ports which are free to such vessels, than if they were wafted on their voyage by the winds, instead of being propelled by the agency of fire. The one element may be as legitimately used as the other, for every commercial purpose authorized by the laws of the Union; and the act of a State inhibiting the use of either to any vessel having a license under the act of Congress, comes, we think, in direct collision with that act. . . .

The Court is aware that, in stating the train of reasoning by which we have been conducted to this result, much time has been consumed in the attempt to demonstrate propositions which may have been thought axioms. It is felt that the tediousness inseparable from the endeavor to prove that which is already clear, is imputable to a considerable part of this opinion. But it was unavoidable. The conclusion to which we have come, depends on a chain of principles which it was necessary to preserve unbroken; and, although some of them were thought nearly self-evident, the magnitude of the question, the weight of character belonging to those from whose judgment we dissent, and the argument at the bar, demanded that we should assume nothing. . . .

Mr. Justice JOHNSON [dissents].

33. The Intra-State Rate Case

The Transportation Act of 1920,¹ popularly known as the Esch-Cummins Law, provided that all railroads which were engaged in interstate transportation should receive a "fair return" on their property. Under this provision, the Interstate Commerce Commission made an elaborate investigation of both freight and passenger rates, and as a result, ordered considerable increases in the interstate rates. Railroads operating in the Wisconsin district were permitted to increase their freight rates thirty-five per cent., and interstate passenger rates were to be fixed at 3.6 cents per mile. The carriers then applied to the Wisconsin Railroad Commission for a corresponding increase in rates for transportation within the state, and were granted authority to increase the freight rates up to the interstate scale. The state commission, however, refused to allow any increases in passenger fares, on the sole ground that a statute, passed by the Wisconsin legislature a number of years before, had prescribed a maximum of two cents per mile for passenger rates.

The railroads then asked the Interstate Commerce Commission for permission to increase their passenger rates within the state. The commission found that the two-cent rate caused an unjust discrimination against interstate commerce, and therefore ordered the desired increase. The Wisconsin commission contended that the Interstate Commerce Commission had no authority to fix rates between points wholly within the state, and refused to recognize the increase. The carriers, including the Chicago, Burlington, and Quincy Railroad Co., then applied to the federal district court for an injunction to keep the state officials from interfering with the new schedule of rates. The injunction was granted by the district court, and the Wisconsin commission carried an appeal to the United States Supreme Court. Forty-five states joined in fighting the case.

¹41 *U. S. Stat. at Large*, 456.

SOURCE—Railroad Commission of Wisconsin *v.* Chicago, Burlington & Quincy Railroad Co., 257 U. S. (1922) 563; 42 S. Ct. 232; 66 L. Ed. 371.

MR. CHIEF JUSTICE TAFT, after stating the case, delivered the opinion of the court. . . .

The report of the Commission shows that if the intrastate passenger fares in Wisconsin are to be limited by the statute of that State to 2 cents per mile, and charges for extra baggage and sleeping car accommodations are to be reduced in a corresponding degree, the net income of the interstate carriers of the State will be cut six millions of dollars below what it would be under intrastate rates on the same level with interstate rates. Under paragraphs 3 and 4 of § 13 and § 15a as enacted in §§ 416 and 422 respectively of the Transportation Act of 1920 . . . , are such reduction and disparity an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce" which the Interstate Commerce Commission may remove by raising the intrastate fares? A short reference to the circumstances inducing the legislation and a summary of its relevant provisions will aid the answer to this question.

The Interstate Commerce Act of 1887, 24 Stat. at Large,] 379, was enacted by Congress to prevent interstate railroad carriers from charging unreasonable rates and from unjustly discriminating between persons and localities. The railroads availed themselves of the weakness and cumbrous machinery of the original law to defeat its purpose, and this led to various amendments culminating in the amending Act of 1910, 36 Stat. [at Large,] 539, in which the authority of the Commission in dealing with the carriers was made summary and effectively complete. Whatever the causes, the fact was that the carrying capacity of the railroads did not thereafter develop proportionately with the growth of the country, and it became difficult for them to secure additional investment of capital on feasible terms. When the extraordinary demand for transportation arose in 1917, the Congress and the President concluded to take over all the railroads into the management of the Federal Government, and by joint use of facilities, which the Anti-Trust Law was thought to forbid under private management, and by use of Government credit, to increase their effectiveness. This was done by appropriate legislation and executive action under the war power. From January 1, 1918, until March 1, 1920, when the Transportation

Act went into effect, the common carriers by steam railroad of the country were operated by the Federal Government. Due to the rapid rise in the prices of material and labor in 1918 and 1919, the expense of their operation had enormously increased by the time it was proposed to return the railroads to their owners. The owners insisted that their properties could not be turned back to them by the Government for useful operation without provision to aid them to meet a situation in which they were likely to face a demoralizing lack of credit and income. Congress acquiesced in this view. The Transportation Act of 1920 was the result. It was adopted after elaborate investigations by the Interstate Commerce Committees of the two Houses.

Under Title II it made provision for the termination of federal control March 1, 1920, for the refunding of the carriers' indebtedness to the United States, and for a guaranty for six months to the carriers of an income equal to the war-time rental for their properties, and directed that, for two years following the termination of federal control, the Secretary of the Treasury, upon certificate of the Commission, might make loans to the carriers not exceeding the maximum amount recommended in the certificate, out of a revolving fund of \$300,000,000.

Under Title IV, amendments were made to the Interstate Commerce Act which included § 13, paragraphs 3 and 4, and § 15a. . . . The former for the first time authorizes the Commission to deal directly with intrastate rates where they are unduly discriminating against interstate commerce—a power already indirectly exercised as to persons and localities, with approval of this court in the *Shreveport* and other cases. The latter, the most novel and most important feature of the act, requires the Commission so to prescribe rates as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. For two years, the return is to be 5½ per cent., with ½ per cent. for improvements, and thereafter is to be fixed by the Commission.

The act sought to avoid excessive incomes accruing, under the operation of § 15a, to the carriers better circumstanced, by using the excess for loans to the others and for other purposes. The act further put under the control of the Interstate Commerce Commission, 1st, the issuing of future railroad securities by the

interstate carriers; 2nd, the regulation of their car supply and distribution and the joint use of terminals; and, 3rd, their construction of new lines, and their abandonment of old lines. The validity of some of these provisions has been questioned. Upon that we express no opinion. We only refer to them to show the scope of the congressional purpose in the act.

It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in § 15a to be one of the purposes of the bill.

Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent. of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent. of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its power to prescribe just and reasonable rates," *i. e.*, powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, § 13, however, and find the Commission for the first time vested with a direct power

to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of § 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, or unjust discrimination against interstate or foreign commerce," within the ordinary meaning of those words. . . .

It is urged that in previous decisions, notably the *Minnesota Rate Cases*, 230 U. S. 352, the *Shreveport Case*, *supra*, and the *Illinois Central Case*, *supra*, the expression "unjust discrimination against interstate commerce" was often used when, as the law then was, it could only mean discrimination as between persons and localities, and therefore that it is to be given the same limited meaning here. But, here, the general words are used after discrimination against persons and localities have been specifically mentioned. The natural inference is that even if they include what has gone before, they mean something more. When we find that they aptly include a kind of discrimination against interstate commerce which the operation of the new act for the first time makes important and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect. . . .

It is objected here, as it was in the *Shreveport Case*, that orders of the Commission which raise the intrastate rates to a level of the interstate structure violate the specific proviso of the original Interstate Commerce Act repeated in the amending acts, that the Commission is not to regulate traffic wholly within a State. To this, the same answer must be made as was made in the *Shreveport Case* (234 U. S. 342, 358), that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce and necessary to its efficiency. Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regula-

tion is not an invasion of state authority or a violation of the proviso.

Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 475. But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. *Pennsylvania R. R. Co. v. International Coal Mining Co.*, 230 U. S. 184, 198. *Caminetti v. United States*, 242 U. S. 470, 490. Such aids are only admissible to solve doubt and not to create it. For the reasons given, we have no doubt in this case.

Counsel for the appellants have not contested the constitutional validity of the statute construed as we have construed it, although the counsel for the state commissions whom we permitted to file briefs as *amici curiæ* have done so. The principles laid down by this court in the *Minnesota Rate Cases*, 230 U. S. 352, 432, 433, the *Shreveport Case*, 234 U. S. 342, 351, and the *Illinois Central Case*, 245 U. S. 493, 506, which are rates cases, and in the analogous cases of *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612, 618; *Southern Ry. Co. v. United States*, 222 U. S. 20, 26, 27; *Second Employers' Liability Cases*, 223 U. S. 1, 48, 51, we think, leave no room for discussion on this point. Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The States are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing in-

terstate commerce agencies is clear. *Wilson v. Shaw*, 204 U. S. 24; *Luxton v. North River Bridge Co.*, 153 U. S. 525; *California v. Central Pacific R. R. Co.*, 127 U. S. 1, 39. In such development, it can impose any reasonable condition on a State's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field.

In *Minnesota Rate Cases*, 230 U. S. 352, where relevant cases were carefully reviewed, it was said, p. 399: "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice, when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of

the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion.

The order of the District Court granting the interlocutory injunction is

Affirmed.

34. A Decision of the Interstate Commerce Commission

Every effort is made to keep the proceedings before the Interstate Commerce Commission much less formal than those before a court of law. Likewise the opinions and decisions which are rendered tend to be less technical from the legal point of view than are those handed down by judges. Nevertheless, as the following opinion shows, certain features of judicial procedure and methods are followed. This decision is typical of the shorter and less technical ones which the commission renders. The tendency to cite not only the decisions of the United States Supreme Court, but also the earlier opinions of the Commission, is particularly noteworthy in this connection. Even the traditional dissenting opinion is retained in the decisions of administrative agencies such as these. It should be noted that this case does not deal with the question of railroad rates in general, but only with sleeping-car charges, and that the discrimination complained of is due to excessively low charges for transportation entirely within one state.

SOURCE—Wichita Falls & Southern Passenger Fares and Charges, 83 I.C.C. 603. Submitted June 7, 1923. Decided November 5, 1923.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This is an investigation upon petitions of respondents, Wichita Falls & Southern Railroad Company and Cisco & Northeastern Railway Company, to determine whether the passenger fares and

the charges upon passengers in sleeping and parlor cars which respondents are required by authority of the State of Texas to maintain for intrastate travel in that State cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce; and if so, what fares and charges, maximum or minimum, or both, shall be prescribed in order to remove such advantage, preference, prejudice, and discrimination. Notice was served upon the State of Texas and it was represented at the hearing. . . .

Prior to *Increased Rates, 1920*, 58 I. C. C., 220, the intrastate and interstate passenger fares of the W. F. & S. were the same, namely, 3 cents per mile for adults and one-half the adult fare for children under 12 years of age and over 5 years. Its intrastate fares are now on that basis, while its interstate fares are 20 per cent higher. The record indicates that the interstate and intrastate passenger fares of the C. & N. E. are on the same basis as those of the W. F. & S. The tariff of the C. & N. E. on file here, which publishes fares based on 3.6 cents per mile, bears a Railroad Commission of Texas number as well as an Interstate Commerce Commission number.

Through inadvertence, it is said, respondents were omitted from the petition of other Texas lines, and consequently were not included in our order in *Intrastate Rates within the State of Texas*, 60 I. C. C., 421, in which we required the steam railroads operating in Texas their respondent to make increases in their intrastate passenger fares and to establish surcharges upon intrastate passengers in sleeping and parlor cars within that State corresponding to the increases and surcharges authorized and then in effect interstate pursuant to *Increased Rates, 1920, supra*. The respondents here subsequently applied to the Railroad Commission of Texas for authority to increase their intrastate fares and surcharges to correspond with the increases required by us to be made by other Texas lines; and upon being advised by that commission that under the laws of the State of Texas it was without jurisdiction to authorize such increases, they filed with us the petitions referred to upon which this investigation was instituted.

No sleeping or parlor car service is operated by the C. & N. E., and, except for an occasional special car, none is operated at the

present time by the W. F. & S. The latter line expects to establish regular Pullman service in the near future.

The witness for the W. F. & S. referred in a general way to commercial travelers from Oklahoma purchasing interstate tickets to points on that line while competitive salesmen from Wichita Falls pay the lower intrastate fare, and also to the fact that interstate fares are being defeated by the practice of interstate passengers purchasing tickets to Wichita Falls and local tickets beyond. The extent of this latter practice and of its effect upon this petitioner's revenues is not shown. During 1922 it transported 312 passengers, producing revenue of \$832.68, upon interstate tickets; 2,233 passengers, producing revenue of \$4,362.58, upon intrastate interline tickets; and 78,098 passengers, producing revenue of \$97,874.88, upon local tickets. Thus, the lower intrastate fares which it was required to maintain resulted in a loss in revenue of over \$20,000. The C. & N. E. estimates a corresponding loss of approximately \$8,500.

The testimony of respondents' witnesses is indefinite, and the record is silent in substantially all essential respects. In other words, there is no showing on this record of "substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce" such as would warrant us in entering the order sought. *Wisconsin R. R. Com. v. C., B. & Q. R. R. Co.*, 257 U. S., 563.

The petitions will be denied and this proceeding discontinued.

EASTMAN, *Commissioner*, dissenting:

I am unable to agree with the majority in this case for the reasons which I stated in my dissenting expression in *Montana Rates and Fares*, 77 I. C. C., 141. I am authorized to state that COMMISSIONER McMANAMY concurs in this dissent.

35. Hammer v. Dagenhart: The First Child Labor Case

Congress passed the first national act to curb child labor on September 1, 1916.¹ This measure prohibited the shipment in interstate commerce of articles recently manufactured with the aid of children's labor. The result of the act was to make it illegal for a factory owner who employed

¹39 U. S. Stat. at Large, 675.

children to market his products in another state for a period of thirty days. This would, of course, greatly increase the capital expense of those factories, and consequently the act was bitterly fought by the interests using child labor. The opinion given below was rendered in the test case which was brought to determine if this act was within the constitutional powers of Congress. R. H. Dagenhart had two sons (Reuben and John) who were working in a cotton mill at Charlotte, North Carolina. One of the boys (Reuben) was under fourteen years of age, and the other (John) was between fourteen and sixteen. Under the North Carolina statutes, both were allowed to work; but the federal Child Labor Act would have prevented the first from working at all and the second from working more than eight hours a day. Dagenhart petitioned the federal district court to issue an injunction to prevent W. C. Hammer, the United States district attorney at Charlotte, from enforcing this act. The court issued the injunction on the ground that the act was unconstitutional; whereupon Hammer appealed the case to the Supreme Court of the United States.

SOURCE—*Hammer v. Dagenhart*, 247 U. S. (1918) 251; 38 S. Ct. 529; 62 L. Ed. 1101.

MR. JUSTICE DAY delivered the opinion of the court. . . .

The controlling question for decision is: Is it within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen have been employed or permitted to work, or children between the ages of fourteen and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock P. M. or before the hour of 6 o'clock A. M.?

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution which authorizes Congress to regulate commerce with foreign nations and among the States.

In *Gibbons v. Ogden*, 9 Wheat. 1, Chief Justice Marshall, speaking for this court, and defining the extent and nature of the commerce power, said, "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities. But it is insisted that adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate.

The first of these cases is *Champion v. Ames*, 188 U. S. 321, the so-called *Lottery Case*, in which it was held that Congress might pass a law having the effect to keep the channels of commerce free from use in the transportation of tickets used in the promotion of lottery schemes. In *Hipolite Egg Co. v. United States*, 220 U. S. 45, this court sustained the power of Congress to pass the Pure Food and Drug Act which prohibited the introduction into the States by means of interstate commerce of impure foods and drugs. In *Hoke v. United States*, 227 U. S. 308, this court sustained the constitutionality of the so-called "White Slave Traffic Act" whereby the transportation of a woman in interstate commerce for the purpose of prostitution was forbidden. In that case we said, having reference to the authority of Congress, under the regulatory power, to protect the channels of interstate commerce:

"If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."

In *Caminetti v. United States*, 242 U. S. 470, we held that Congress might prohibit the transportation of women in interstate commerce for the purposes of debauchery and kindred purposes. In *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S.

311, . . . which sustained the authority of the Government to prohibit the transportation of liquor in interstate commerce, the court said: “. . . the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guarantees of the Constitution, embrace.”

In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.

This element is wanting in the present case. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are of themselves harmless. The act permits them to be freely shipped after thirty days from the time of their removal from the factory. When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

Commerce “consists of intercourse and traffic . . . and includes the transportation of persons and property, as well as the purchase, sale and exchange of commodities.” The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co. v. Yurkonis*, 238 U. S. 439.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

“When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its

transfer to another state.” (Mr. Justice Jackson *In re Green*, 52 Fed. Rep. 113.) This principle has been recognized often in this court. *Coe v. Errol*, 116 U. S. 517; *Bacon v. Illinois*, 227 U. S. 504, and cases cited. If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd v. Pearson*, 128 U. S. 1, 21.

It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation, and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may coöperate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which have no such regulations; surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress.

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in their exercise of the police power over local trade and manufacture.

The grant of authority over a purely federal matter was not intended to destroy the local power always existing and care-

fully reserved to the States in the Tenth Amendment to the Constitution.

Police regulations relating to the internal trade and affairs of the States have been uniformly recognized as within such control. . . .

In the judgment which established the broad power of Congress over interstate commerce, Chief Justice Marshall said [*Gibbons v. Ogden*, (1824)] (9 Wheat. 203): "They [inspection laws] act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike-roads, ferries, &c., are component parts of this mass." . . .

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit. That such employment is generally deemed to require regulation is shown by the fact that the brief of counsel states that every State in the Union has a law upon the subject, limiting the right to thus employ children. In North Carolina, the State wherein is located the factory in which the employment was had in the present case, no child under twelve years of age is permitted to work.

It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers; "this principle," declared Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, "is universally admitted." . . .

In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. *Lane County v. Oregon*, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. *New York v. Miln*, 11 Pet. 102, 139; *Slaughter House Cases*, 16 Wall. 36, 63; *Kidd v. Pearson*, *supra*. To sustain this statute would not be in our judgment a recognition

of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States. . . .

In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely state authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority does not extend. The far reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed.

For these reasons we hold that this law exceeds the constitutional authority of Congress. It follows that the decree of the District Court must be

Affirmed.

MR. JUSTICE HOLMES, dissenting. . . .

The first step in my argument is to make plain what no one is likely to dispute—that the statute in question is within the power expressly given to Congress if considered only as to its immediate effects and that if invalid it is so only upon some collateral ground. The statute confines itself to prohibiting the carriage of certain goods in interstate or foreign commerce. Congress is given power to regulate such commerce in unqualified terms. It would not be argued today that the power to regulate does not include the power to prohibit. Regulation means the prohibition of something, and when interstate commerce is the matter to be regulated I cannot doubt that the regulation may prohibit any part of such commerce that Congress sees fit to forbid. At all events it is established by the *Lottery Case* and others that have followed it that a law is not beyond the regulative power of Congress merely because it prohibits certain transportation out and out. *Cham-*

pion v. Ames, 188 U. S. 321, 355, 359, *et seq.* So I repeat that this statute in its immediate operation is clearly within the Congress's constitutional power.

The question then is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the States in a matter upon which I have admitted that they are free from direct control. I should have thought that that matter had been disposed of so fully as to leave no room for doubt. I should have thought that the most conspicuous decisions of this Court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any State.

The manufacture of oleomargarine is as much a matter of state regulation as the manufacture of cotton cloth. Congress levied a tax upon the compound when colored so as to resemble butter that was so great as obviously to prohibit the manufacture and sale. In a very elaborate discussion the present Chief Justice excluded any inquiry into the purpose of an act which apart from that purpose was within the power of Congress. *McCray v. United States*, 195 U. S. 27. As to foreign commerce see *Weber v. Freed*, 239 U. S. 325, 329; *Brolan v. United States*, 236 U. S. 216, 217; *Buttfield v. Stranahan*, 192 U. S. 470. Fifty years ago a tax on state banks, the obvious purpose and actual effect of which was to drive them, or at least their circulation, out of existence, was sustained, although the result was one that Congress had no constitutional power to require. The Court made short work of the argument as to the purpose of the act. "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers." *Veazie Bank v. Fenno*, 8 Wall. 533. So it well might have been argued that the corporation tax was intended under the guise of a revenue measure to secure a control not otherwise belonging to Congress, but the tax was sustained, and the objection so far as noticed was disposed of by citing *McCray v. United States*. *Flint v. Stone Tracy Co.*, 220 U. S. 107. . . .

The Pure Food and Drug Act which was sustained in *Hipolite Egg Co. v. United States*, 220 U. S. 45, with the intimation that "no trade can be carried on between the States to which it [the power of Congress to regulate commerce] does not extend," 57,

applies not merely to articles that the changing opinions of the time condemn as intrinsically harmful but to others innocent in themselves, simply on the ground that the order for them was induced by a preliminary fraud. *Weeks v. United States*, 245 U. S. 618. It does not matter whether the supposed evil precedes or follows the transportation. It is enough that in the opinion of Congress the transportation encourages the evil. I may add that in the cases on the so-called White Slave Act it was established that the means adopted by Congress as convenient to the exercise of its power might have the character of police regulations. *Hoke v. United States*, 227 U. S. 308, 323. *Caminetti v. United States*, 242 U. S. 470, 492. . . .

The act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole. If, as has been the case within the memory of men still living, a State should take a different view of the propriety of sustaining a lottery from that which generally prevails, I cannot believe that the fact would require a different decision from that reached in *Champion v. Ames*. Yet in that case it would be said with quite as much force as in this that Congress was attempting to intermeddle with the State's domestic affairs. The national welfare as understood by Congress may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command.

MR. JUSTICE MCKENNA, MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE concur in this opinion.¹

¹ As the result of this decision, Congress passed an act taxing factories which employed children. Cf. p. 157 above, where extracts from the decision involving that act are given.—EDITOR.

36. Declaration of War with Germany

In a note of January 31, 1917, the German Government announced its policy of "unlimited submarine warfare," under which every vessel seeking to approach the ports of the Allied Powers would be liable to attack. As soon as it became evident that the Germans intended to persist in this policy, President Wilson called Congress in extraordinary session and, laying before it the facts of the situation, asked that war be declared. The following resolution was passed by a large vote in both houses, and four days later was signed by the President.

SOURCE—40 *U. S. Stat. at Large*, 1.

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

CHAMP CLARK

Speaker of the House of Representatives

THOS. R. MARSHALL

Vice President of the United States and

President of the Senate.

Approved, April 6, 1917,

WOODROW WILSON.

37. A Literacy Test for Voting

Some form of educational requirement for voting has been provided in seventeen states. Eight of these are south of the Mason Dixon line and use the literacy test chiefly as a means to prevent negroes from voting. By 1920 eight other states had adopted this qualification, but not until the New York law of 1923 was the administration of these tests left entirely to the school authorities.

On November 8, 1921, the following amendment to the New York constitution was approved:

“After January first, one thousand nine hundred and twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the legislature to enforce this provision.”¹

In pursuance of this amendment, the legislature of 1922 passed an act prohibiting any “new voter” from registering or voting unless able to prove his ability to read and write English. The term “new voter” was defined to include those who became qualified to vote after January 1, 1922, and who had not already voted in a New York general election. This act gave the prospective voter an alternative of two methods of proving his literacy. He could either take an oral and written test given by the election inspectors, or he could take a written test administered by the school authorities. It soon became evident that such a dual system could not be so administered as to give justice to all voters. The two tests set up dissimilar standards, and it was impossible to provide for a common scoring of them. Consequently, the legislature in 1923 amended the act so as to give the Regents of the University of the State of New York sole power to control the issuance

¹ *Constitution of the State of New York* (Albany, 1923), Article II, section 1. This amendment was adopted by a vote of 896,355 to 640,701.

of certificates of literacy, thereby abolishing the tests by the election inspectors.

Under authority of this act, the Regents, in consultation with a large number of educational experts, had over a thousand tests prepared. The words employed in these tests were taken from the readers used in the first five grades of the public schools. It is evident, therefore, that these tests represent the minimum reading and comprehension ability of a pupil in the sixth grade. In constructing the tests, every effort was made to keep them objective, in order that as much of the personal bias of the examiner would be eliminated as possible. The following documents illustrate the principal features of the test. The sample given was one of six tests available for use during 1923.

- SOURCES**—A. "Regulations and Directions Governing the Issuance of Certificates of Literacy and Conduct of New York State Regents Literacy Test," *University of the State of New York Bulletin*, No. 799, pp. 8-10 (Mar. 1, 1924).
 B. *Ibid.*, pp. 12-13.
 C. Test paper used in the 1923 examinations. See also A. E. Rejall, "A New Literacy Test for Voters," *School and Society*, XIX, 2 (Mar. 1, 1924); J. R. Voorhis, "An Educational Test for the Ballot," *Educational Review*, LXVII, 4 (Jan., 1924).
 D. "Key for Scoring Papers; Tests—1923." Published by the Regents of the University of the State of New York.

A

REGENTS' REGULATIONS GOVERNING ISSUANCE OF CERTIFICATE OF LITERACY.

§660 Certificates of literacy shall be issued in accordance with the regulations of the Board of Regents by the Commissioner of Education in coöperation with a city, village or district superintendent of schools. A superintendent of schools may designate as examiners, teachers, directors or principals of a public day or evening school. The superintendent of schools may act in the capacity of examiner himself.

§661 Certificates of literacy shall be issued upon the following evidence of literacy:

a To all applicants whose educational credentials show that they have successfully completed the work prescribed for the sixth grade of the public day schools of the State.

b To persons whose credentials show that they have completed a course of study in a day or evening public or private or parochial school in this State in reading and writing English. Such course of instruction should be equivalent of the sixth grade of the public elementary school of this State. Credentials for equivalent work in reading and writing English in schools outside of the State will be honored after investigation.

c To persons who because of physical disability only, are at the time of application for a certificate of literacy unable to meet the literacy requirements. . . .

d To all applicants, who can not submit the evidence prescribed under *a*, *b* and *c* above, after they have successfully passed an examination or test authorized by the Commissioner of Education.

e Certificates of literacy shall be delivered in person or mailed as soon as practicable after the close of the examination to all applicants who present satisfactory education credentials or pass the New York State Regents literacy test. . . .

§663 The certificate of literacy shall contain:

a The full name of the applicant written in ink by the applicant in the presence of the examiner.

b The full name and position of the examiner written by examiner.

c Name of city, village or town where certificate is issued.

d Printed, stamped or written signature of city, village or district superintendent in whose district the certificate of literacy is issued.

e Printed, stamped or written signature of the Commissioner of Education.

§664 The examiner shall notify all applicants that if they fail to secure a certificate of literacy they are entitled to take one subsequent examination each year at one of the regularly specified times set for examinations. . . .

§666 Examination of applicants for a certificate of literacy shall be conducted in public school buildings, offices or other public places. Such places shall be designated by the superintendent of schools and shall be conveniently located. . . . The New York State Regents literacy test [shall be] given in accordance with the following schedule:

1 In cities of one million inhabitants or more on not less

than two days in the week preceding the first day of registration at hours to be designated by the superintendent of schools and on the days and hours designated by the election law for registration.

2 In all other cities of the first class¹ and all cities of the second class¹ on the Thursday before the first day of registration at hours designated by the superintendent of schools and on not less than two other evenings between the hours of 7 and 9.30 p. m. before the last day of registration.

3 In all other places where personal registration is required on the Thursday before the first day of registration at hours designated by the local superintendent of schools and not less than one evening between the hours of 7 and 9.30 p. m. before the last day of registration.

4 In localities where personal registration is not required on election day between the hours of 9 a. m. and 4 p. m. and at such other times and places during the two weeks preceding election day as may be designated by the superintendent of schools.

5 The New York State Regents literacy test, however, may be given at other times during the school year to students regularly enrolled in the public evening schools, factory or home classes upon the request of the superintendent of schools and the approval of the Commissioner of Education. . . .

§668 Superintendents shall forward within one week after election day to the Division of Vocational and Extension Education the following:

a The examination papers and unused certificates of literacy of unsuccessful candidates.

b All unused tests and unused certificates of literacy.

c A statistical report on blanks furnished by the Commissioner of Education.

B

DIRECTIONS FOR GIVING THE NEW YORK STATE REGENTS LITERACY TEST

1 The examination may be given to a candidate individually in case but one appears or to a group of candidates simultaneously.

2 When examination is given to a group of candidates simul-

¹First class cities have a population of 175,000 or more; second class cities have a population of 50,000 or more, but less than 175,000. *Constitution of the State of New York*, Article XII.

taneously, a sufficient number of proctors should be provided to assist in conducting the examination. . . .

3 No one except the candidates themselves, members of the State Department of Education, and school officials authorized by the superintendent of schools shall be admitted to the examination room while the examination is in process.

4 When ready to begin examination distribute one certificate of literacy blank to each candidate and see that he writes his full name at the proper place on the certificate in *ink*.

5 Collect each certificate and retain until applicant's paper has been rated. If applicant passes test, fill in necessary data, on certificate and stub and deliver to applicant in person or by mail as soon as practicable after the examination. If the applicant fails to pass test, do not deliver a certificate of literacy. A notation that the candidate has failed should be made on the stub of the certificate of literacy, and the certificate forwarded to Albany. When a candidate succeeds in the Regents test, sign the certificate of literacy and deliver by mail or in person to the candidate as soon as practicable after the examination. Make proper notation on stub of certificate of literacy.

6 Do not permit candidate to retain test paper or make copy of test. *This is imperative.*

7 Supply a fresh test paper if necessary but destroy spoiled paper.

8 Allow 15 minutes for examination; then collect all papers.

9 The examination paper of each candidate whether successful or unsuccessful should be sent to the superintendent of schools or some official designated by him. . . .

11 Distribute *examination papers*, being sure that the instruction side of the examination paper is the side exposed to the candidate. Before papers are distributed announce that nothing is to be done with the papers that are placed upon the desk or table until candidates are notified. . . .

12 Be sure that each candidate writes his full name, voting address and the date at the top of test paper.

13 When this is done, read the *instruction for the test* aloud *slowly and distinctly*. The reading of these instructions should occupy at least 70 or 80 seconds. Candidates should read silently with you. Just as soon as you have finished reading the directions, ask orally the six questions appearing immediately below the instructions for the test. The questions are designed to make

certain that all candidates understand the directions. Many candidates, because of their foreign birth, may be slow in understanding all the directions. When you are satisfied that all candidates understand the directions, begin test. Keep exact record of time.

C

1923
Test 3

NEW YORK STATE REGENTS LITERACY TEST

Write your name here.....
First name
Middle initial
Last name

Write your voting address here.....

Write the date here.....
Month
Day
Year

Instructions for the Test

This is a test to see whether you can read and write English. On the other side of this sheet there is a selection for you to read. First, read the selection. Next, read the first question. Then, go back and read the selection until you find the answer to this first question. Usually, the answer will be only one or two words. When you have found the correct answer, write it on the dotted line after the first question. You need not answer in a complete sentence. Write the answer as plainly as you can, for this is a test of both reading and writing. Answer all the other questions in the same way. When you have answered every question, read the selection and answers to your questions over again, and make sure you have made no mistakes.

- 1 Is there anybody who does not know what we are to do?
 - 2 When you turn the sheet, what are you to do first?
 - 3 Where will you find the answers to the questions?
 - 4 Where are you to write the answer to each question?
 - 5 Do you need to answer in a complete sentence?
 - 6 How many words will there usually be in the answer?
- If you have any other questions, ask them now.*
 Do not write in the space below.
 Turn your paper over—begin reading.

(To be Filled in by the Examiner)

Number of answers correct.....

Candidate's rating.....
P (passed)
F (failed)

Place where examination was held.....
County (City, village, town)

Certificate of literacy was.....to successful candidate.
(Mailed or delivered in person)

Signature of examiner.....

Title of examiner.....

Examiner will preserve both successful and unsuccessful papers until after election day—they should be forwarded to Albany within one week after election day.

[Reverse Side]

1923

NEW YORK STATE REGENTS LITERACY TEST **Test 3**

Read this and then write the answers. Read it as many times as you need to.

In New York State a general election will be held on November 6, 1923. On election day every voter should go to the polls and vote. The polling place is a room where several election officers meet for the purpose of receiving and counting the ballot of each voter of an election district. When a voter enters the polling place he gives his name to the election officers. A citizen votes either by ballot or by a voting machine. A ballot is a slip of paper. Both the ballot and the voting machine contain the names of the great political parties and the names of candidates of each party.

- 1 On what day will the general election in New York State be held in 1923?...
.....
- 2 Who should go to the polls and vote on election day?.....
.....
- 3 What is the place called where voters go to vote?.....
.....
- 4 What is it that election officers receive and count?.....
.....
- 5 What does the voter give to the election officer when he enters the polling place?
.....
- 6 How does a citizen vote?.....
.....
- 7 What is the ballot?.....
.....
- 8 What else besides the names of the candidates of each political party do both the ballot and voting machine contain?.....
.....

D

KEY FOR SCORING PAPERS—TEST 3

- | | | |
|---|--|-------------------------------------|
| 1 | <i>Nov. sixth, 1923, Nov. 6, voting day</i> | |
| 2 | <i>Every voter, all voters</i> | * <i>Incorrect</i> |
| 3 | <i>The polls, polling place, election room.</i> | * people, persons |
| 4 | <i>The ballot of each voter, the ballot, voter's ballot.</i> | * schools, room |
| 5 | <i>His name</i> | * names of people |
| 6 | <i>Either by ballot, or by voting machine (either or both)</i> | * piece of paper |
| 7 | <i>A slip of paper</i> | * vote |
| 8 | <i>The names of the great political parties</i> | * the man's name, the voter's name. |

Required number of correct answers for passing credit—6.

PART III

STATE AND LOCAL GOVERNMENT

38. An Act Calling a Constitutional Convention (Massachusetts, 1919)

The oldest constitution in effect in any state at the present time is that of Massachusetts, dating from 1780. Although the commonwealth has undergone enormous social, economic, and political changes since John Adams first drafted the instrument, these have been met solely by amendment. This document was limited to a "Declaration of Rights" and a "Frame of Government," and was therefore brief and flexible. But for these qualities, it could hardly have survived so long. Prepared after most of the other states had drawn up their fundamental law, it incorporated many features that had already stood the test of at least a short period of time. Nevertheless, it was drafted early enough to avert the insertion in it of a mass of legislative material such as clutters up the more recent attempts at constitution-making.

The original document has, of course, been amended a number of times. On three occasions constitutional conventions were called to consider revision, and at other times amendments have been added by legislative proposal and popular ratification. Down to 1915, forty-four amendments were adopted, some of which were proposed by the legislature, and others by constitutional conventions. The first convention was held in 1820 and submitted fourteen proposals for ratification, nine of which were approved by the voters. In 1853 a convention made an attempt to frame a new constitution. But so unpopular was its plan that even the special amendments, which it also proposed, were defeated.

From 1853 to 1915 there was no important movement for a revision of the fundamental law. By the latter date, however, it became apparent that extensive changes were needed. Twenty-one amendments had been adopted since the second convention adjourned, and two of these had been repealed. Furthermore, there was a growing demand for the initiative and referendum, a budget system, the short ballot, and direct election of judges. Both parties recognized that the best method of considering these proposals was in a representative convention. In his address to the legislature on January 6, 1916, Governor McCall incorporated a recommendation that such a convention be called, and in pursuance of this suggestion the General Court passed the act given below. The measure was ratified at a popular referendum by a vote of 217,293 to 120,979.

The convention met in 1917 and, after some discussion, adopted three amendment proposals. It then adjourned pending a vote on these by the people. All were approved, and the convention reconvened the following year and proposed nineteen additional amendments, which were also approved. In 1919 the convention met for a third time and adopted a rearrangement of the different parts of the constitution. This also was ratified by the voters. One of the most important pieces of work of the convention was the proposal for the initiative and referendum which is given below, page 235.

SOURCES—*General Acts passed by the General Court of Massachusetts, 1916* (Boston, 1916), chap. 98, pp. 74-77; *Manual for the Constitutional Convention, 1917* (Boston, 1917), 254-257; *Journal of the Constitutional Convention, 1917* (Boston, 1917), 3-5; *Debates in the Massachusetts Constitutional Convention* (Boston, 1919), I, pp. vii-ix.

AN ACT TO ASCERTAIN AND CARRY OUT THE WILL OF THE PEOPLE RELATIVE TO THE CALLING AND HOLDING OF A CONSTITUTIONAL CONVENTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. For the purpose of ascertaining the will of the people of the commonwealth with reference to the calling and holding of a constitutional convention, the secretary of the commonwealth shall cause to be placed on the official ballot to be used at the next annual state election the following question:—"Shall there be a convention to revise, alter or amend the constitution of the commonwealth?" . . . The governor shall, by public proclamation, on or before the first Wednesday in January next, make known the result by declaring the number of votes in the affirmative and the number in the negative; and if it shall appear that a majority of said votes is in the affirmative, it shall be deemed and taken to be the will of the people that a convention be called and held to revise, alter or amend the constitution, and in his proclamation the governor shall call upon the people to elect delegates to the convention, at a special election to be held in all the cities and towns of the commonwealth on the first Tuesday in May in the year nineteen hundred and seventeen.

SECTION 2. The number of delegates to be elected to the convention shall be three hundred and twenty, of whom sixteen shall be elected at large, sixty-four by the sixteen congressional districts, to wit, four by each district, and two hundred and forty by the legislative representative districts of the commonwealth, each district having the same number of delegates as it is then entitled to elect representatives to the general court.

SECTION 3. Nomination of candidates for the office of delegate to the constitutional convention shall be made by nomination papers without party or political designation which shall be signed in the aggregate by not less than twelve hundred voters for each candidate at large, by not less than five hundred voters for each candidate for delegate from a congressional district, and by not less than one hundred voters for each candidate for delegate from a legislative representative district. Said papers shall be filed on or before five o'clock in the afternoon on the first Tuesday in March in the year nineteen hundred and seventeen. No person shall be a candidate for delegate in more than one district, or both in a district and at large. . . . No person shall be a candidate for delegate from a legislative representative district in which he does not reside.

SECTION 4. If in the commonwealth at large, or in any district, the number of persons nominated by nomination papers equals or exceeds three times the number to be elected delegates as provided

by section two, a non-partisan primary shall be held in the commonwealth, or in such district, on the first Tuesday of April in the year nineteen hundred and seventeen. At such primary, twice the number of persons to be elected delegates shall be chosen from those nominated by nomination papers, and those so chosen shall be deemed nominated as candidates for delegate, and their names only shall appear on the ballot at said special election. . . .

SECTION 5. At the special election to be held under the provisions of section one, every person then entitled to vote for state officers shall have the right to vote for sixteen delegates at large, for four delegates from his congressional district, and for the number of delegates from his representative district to which that district is entitled under the provisions of section two. The number of delegates of each class for which the voter has the right to vote shall appear on the official ballot. No party or political designation shall appear on said ballot.

SECTION 6. The persons elected delegates shall meet in convention in the state house, in Boston, on the first Wednesday in June in the year nineteen hundred and seventeen. They shall be the judges of the returns and election of their own members, and may adjourn from time to time; and one hundred and sixty-one of the persons elected shall constitute a quorum for the transaction of business. They shall be called to order by the governor, and shall proceed to organize themselves in convention, by choosing a president and such other officers and such committees as they may deem expedient, and by establishing rules of procedure; and when organized, they may take into consideration the propriety and the expediency of revising the present constitution of the commonwealth, or making alterations or amendments thereof. Any such revision, alterations or amendments, when made and adopted by the said convention, shall be submitted to the people for their ratification and adoption, in such manner as the convention shall direct; and if ratified and adopted by the people in the manner directed by the convention, the constitution shall be deemed and taken to be revised, altered or amended accordingly; and if not so ratified and adopted the present constitution shall be and remain the constitution of the commonwealth.

SECTION 7. The convention shall be provided by the sergeant-at-arms, at the expense of the commonwealth, with suitable quarters and facilities for exercising its functions. It shall establish the compensation of its officers and members, which shall not

exceed seven hundred and fifty dollars for each member of the convention as such. It shall, subject to the approval of the governor and council, provide for such other expenses of its session as it shall deem expedient, and may cause to be prepared and issued a statement briefly setting forth such arguments as the convention may see fit relative to any revision, alteration or amendment of the constitution adopted by it, or any part thereof. . . . The governor, with the advice and consent of the council, is authorized to draw his warrant on the treasury for any of the foregoing expenses.

SECTION 8. . . .

SECTION 9. All laws relating to nominations and nomination papers, and to primaries, election and corrupt practices therein, shall, so far as is consistent herewith, apply to the nomination of candidates for delegate to the convention, and to the primaries and special election provided for by this act.

Approved April 3, 1916.

39. Organization of a Constitutional Convention (Nebraska, 1919)

The Nebraska constitution of 1875 was drafted before the agricultural revolution of the last part of the nineteenth century. Consequently it rapidly became unsuited to the new conditions of economic and political life which developed as the result of a tremendous increase in population, the invention of mechanical aids to agriculture, the centralization of farm control, and the rapid development of urban centers. The ordinary methods of keeping a constitution abreast of the times proved unworkable in Nebraska for the reason that any amendment had to be ratified, not merely by a majority of the electors voting on the measure, but also by a majority of all who voted at the election. Out of nineteen amendments proposed between 1875 and 1906, only one was adopted, although most of them received more affirmative than negative votes; even the single victory was made possible only by "a generous interpretation of the contents of the ballot boxes."¹ The

¹ *Nebraska Blue Book, 1918* (Lincoln, 1918), 72.

state finally resorted to a constitutional subterfuge—that of counting straight party votes for an amendment if it had been previously endorsed by a party convention or primary. But it was freely admitted that this was not the proper way to change a constitution; at best the amendments made were but fragmentary. The only practical method of bringing the document up to date was a general revision of the entire instrument through a convention.

In spite of this recognized need for a revisory body, the legislature was reluctant to call one. Not, indeed, until there was serious threat to put the matter before the voters by an initiative petition did the legislature act. When the question was referred to a popular vote, both parties approved it in their platform, and it carried by a vote of three to one. The legislature of 1919, therefore, provided for the election of delegates, with the stipulation that the ballots should be without party designation. In the campaign that followed, lines were drawn most sharply between the conservative business interests and the agrarian and labor groups. The conservatives found powerful supports in the post-war feeling against innovation and the prejudice against the Non-Partisan League, and the election was not a close one; in a number of districts there was no contest. Two-thirds of the delegates elected were identified with the conservative group.¹

The first work of any convention is to organize itself for business. Before the convention meets, there is invariably a great deal of caucusing, wire-pulling, and log-rolling, in the course of which it usually appears that there are two principal contestants for the presidency. Since delegates to a constitutional convention are frequently chosen on a non-partisan basis, the sharpness of party lines is likely to be clouded somewhat by other differences, which are often of a personal or economic nature. The following extract from the *Proceedings* of the Nebraska convention shows the general method by which such a body organizes

¹Information furnished through the courtesy of Dr. J. G. W. Lewis, a member of the convention.

itself. The personal and economic conflicts which beset every such body are only thinly veiled by the obvious attempt to secure harmony. Incidentally, the extract throws a great deal of light upon the character and viewpoint of many of the members.

SOURCE—*Proceedings of the Nebraska Constitutional Convention, 1919-1920* (Lincoln, 1920), 1-18.

LINCOLN, NEBRASKA, *Tuesday, December 2, 1919, 12 o'clock M.*

The Convention was called to order by Hon. D. M. Amsberry, Secretary of State, at 12 o'clock noon.

Invocation by Rev. W. T. Elmore: . . .

MR. STEBBINS: I move that Nathan P. McDonald, of Buffalo county, be made temporary chairman of this Convention.

Motion prevailed.

Thereupon a committee of three members, Stebbins, Haskell and Beeler, was appointed to escort the temporary chairman to the chair.

MR. AMSBERRY: Gentlemen, your Chairman, Mr. McDonald.

MR. McDONALD: Gentlemen of the Convention: I thank you. Dull indeed would be the sensibilities of any man who did not highly appreciate the privilege of presiding over this body and the distinguished honor you have conferred, even though temporary. We are assembled here in accordance with the form of our government, to represent the people of Nebraska, and are charged with the responsibility of redrafting and amending the great charter of the commonwealth. It is a task of such vital importance that it demands the best we have—the utmost of our devotion. What we shall do here may affect the vital interests of every man, woman and child within the boundaries of our beloved state. We are here not alone representing the majority that elected us in our district. We represent as well the minority that was opposed to us. Here we know no faction, no clique, no special interests, no personal ambition—no cause to serve except the cause of the people of the State of Nebraska. . . . We are here as patriots to serve the interests of the people who have sent us here. Let us pray Almighty God that what shall be done shall redound to the goodness and happiness and glory of the people of Nebraska, and that under High benign influence the blessings of peace and prosperity may be upon us. Thanking you again, gentlemen, what is your further pleasure. (Applause).

MR. PETERSON: Mr. Chairman: I propose the name of Mr. Rodman as temporary secretary of the Convention.

The selection was made the unanimous choice of the Convention for temporary secretary.

Upon motion of Mr. Norton, Mr. F. C. Radke was nominated as temporary assistant secretary, and his election was made unanimous.

MR. SEARS: I move that the chairman appoint a committee of five on credentials.

Motion prevailed, and the Chair appointed as such committee Messrs. Sears, Norton, Peterson, Stebbins and Evans.

REPORT OF COMMITTEE ON CREDENTIALS.

Lincoln, December 2, 1919.

To the Constitutional Convention:

Your Credentials Committee, having examined the certificates of election submitted, and the records and certificates in the office of the Secretary of State, hereby report the following list of duly elected delegates entitled to sit in this Convention:

Abbott, Lysle I.	Junkin, Geo. C.
Albert, I. L.	Keefe, Harry L.
Alder, Lewis K.	Keeney, H. G.
Anderson, Walter L. ¹ . . .	Kieck, W. G. ¹ . . .

Your Committee further report that a Notice of Contest and petition is on file in the office of the Secretary of State wherein Charles Wooster contests the election of Elmer E. Ross as delegate from the Forty-ninth Representative District.

C. W. SEARS,
I. D. EVANS,
W. M. STEBBINS,
J. N. NORTON,
C. PETRUS PETERSON.

C. W. SEARS: Mr. Chairman: I move that the report of the Credentials Committee be adopted, and that the delegates as listed therein be seated as delegates to this Convention.

Motion prevailed.

MR. OLESON: I move that a committee of three be appointed

¹The names of the other members of the convention are omitted. There were 100 members in all.—EDITOR.

to wait upon the Chief Justice to administer the oath of office to the members of the Convention.

Motion prevailed.

A committee consisting of Messrs. Oleson, Wiltse and Stewart was appointed to wait upon the Chief Justice to administer the oath of office to members of the Convention.

Mr. WILTSE: I present to you Mr. Morrissey, Chief Justice.

The CHAIRMAN: The Chief Justice will now administer the oath to the delegates.

OATH OF OFFICE OF DELEGATES.

You, and each of you, do solemnly swear that you will support the Constitution of the United States, and the Constitution of the State of Nebraska, and that you will faithfully, and to the best of your ability, discharge the duties devolving upon you as a member of the Constitutional Convention, elected to revise, amend, or change the Constitution of the State of Nebraska, so help you God. . . .

Mr. JUNKIN: I move that we now proceed to the election of President, Vice President, Secretary, Chaplain and Sergeant at Arms, and that we vote for them separately by ballot, and that they be placed in nomination by informal ballot.

Motion prevailed.

Upon motion, three tellers were appointed and the Convention thereupon proceeded to the election of permanent officers.

Mr. POLLARD: I rise to a question of privilege. In coming to the city a few days ago, a great many of my friends from different parts of the state appealed to me to become a candidate for president of this Convention. I am not insensible to the honor connected with the presidency of this body of men; but I feel, however, that my place is upon the floor. I have but one ambition connected with my work here, and that is that I may do my part toward submitting to the people of the state a Constitution that will fairly represent the progress and spirit that permeates the atmosphere of today. Therefore I request my friends not to vote for me for this place. . . .

The result of an informal ballot for permanent president of the convention was announced as follows:

Weaver 49, Jackson 22, Heasty 6, Pollard 3, McLeod 6, Saunders 1, Selleck 9, Haskell 1, Flansburg 1, McDonald 1.

Upon announcement of the result of the informal ballot for president, Messrs. Heasty, Selleck and McLeod respectively announced the withdrawal of their names from further consideration, and the Convention proceeded to a formal ballot for president, the result being announced as follows:

Weaver 63, Jackson 34, McLeod 1, Saunders 1.

Mr. JACKSON: Mr. Chairman, I move you that Mr. Weaver be made the unanimous choice of this Convention for permanent President.

The CHAIRMAN: Gentlemen, you have heard the motion. Those in favor will manifest it by saying "aye" and opposed "no."

Motion prevailed.

The CHAIRMAN: I will appoint Mr. Jackson and Mr. Selleck to conduct Mr. Weaver to the Chair.

Mr. JACKSON: Gentlemen of the Convention, it is with great pleasure I present to you your permanent president, Mr. Weaver.

A. J. WEAVER, Permanent President: Gentlemen of the Constitutional Convention: I acknowledge the honor that you have conferred upon me today. I deem it an especial honor because of the high character and ability of the delegates who are accredited to this Convention, and I shall endeavor to the best of my ability to serve you fairly, impartially and efficiently. . . .

It is said that Confucius, the great Chinese Sage, once traveled in a distant part of his Empire. One day he came upon a woman weeping bitterly and stopped to inquire the cause of her grief. He learned that her husband had recently been killed by a tiger. "Why," asked the great Chinaman, "do you continue to reside in a country infested by such wild beasts?" "We have a good government here," the woman replied. "Behold," exclaimed the Sage, "a bad government is more to be feared than rapacious tigers." Government, therefore, in all ages, gentlemen of this Convention, has been a serious business. Upon the kind of government depends largely the progress and growth of States and the prosperity and happiness of their people. And in the work which we have been summoned to do let us hope that we may perform speedily the duties entrusted to us; let us hope that we will not only write a Constitution which will declare the rights of every citizen of Nebraska, but which will also provide a form of government which shall be efficient, which shall be just, which shall be progressive, and which shall safe-guard and protect the rights of the generations of the future.

I thank you, gentlemen. What is your pleasure? (Applause).

The PRESIDENT: Under the motion that has been adopted, we will proceed to the election of a Vice-President of this Convention by informal ballot.

Vote on Vice President (Informal): Oleson, of Cuming, 12; Jackson, of Nuckolls, 65; Heasty, of Jefferson, 2; Selleck, of Lancaster, 3; Pollard, of Cass, 6; Donohoe, of Holt, 1; Junkin, of Gosper, 1; Spillman, of Pierce, 4; Haskell, of Dixon, 2; Stewart, of Lancaster, 1.

Mr. JUNKIN: I move the informal ballot be declared the formal ballot and that Mr. Jackson be unanimously elected Vice-President.

Motion prevailed.

The PRESIDENT: I will appoint Mr. Selleck, of Lancaster, Mr. Junkin, of Gosper; and Mr. Heasty, of Jefferson, as a committee of three to conduct Mr. Jackson before the Convention. . . .

It gives me great pleasure to present to you your Vice-President, a man who has made a record for high citizenship in Nebraska, a gentleman who has served this State fairly and ably as a Speaker of the Lower House of the Legislature, and who is qualified in every way to occupy a high place in this Convention. And it is my great pleasure to see him elected, at this time, Vice-President, and I am pleased to present him to you. (Applause).

Mr. JACKSON: Mr. President and gentlemen of this Convention: I congratulate you upon your choice for President, and I can hardly find words to express my gratitude and appreciation for being selected Vice-President of such an honorable body of citizens. I was elected Speaker of the House two consecutive terms. I considered that quite an honor. But I feel that this is the greatest honor that ever came to me, I feel for once we have a body of men assembled in this chamber that is willing to forget politics; the deeper I get into politics the less I think of parties. I have found that all good, that all virtue, is not in any one party; we are all endowed with so much push and energy, and I made up my mind four years ago what little energy I had was going to be used in building up the state of Nebraska rather than pulling down some political party. . . .

The PRESIDENT: Under the motion already passed, we will now proceed to take an informal ballot on the election of a Secretary. Gentlemen, prepare your ballots.

The ballot resulted as follows: Barnard 60, Hitchcock 16, Shumway 4, Halderson 8, Decker 1, Kennedy 1, Walrath 8.

Mr. SEARS: I move that the informal ballot be made the formal ballot, and that Barnard be unanimously elected Secretary.

Motion prevailed.

Mr. BARNARD, Secretary: A man said to me a while ago "Don't talk, I am hungry." Gentlemen, what is your pleasure?

...

Mr. BIGELOW, of Douglas: I move that a Committee on Rules and Procedure be constituted to comprise two delegates selected by the delegates from each congressional district and announced from the floor, which committee shall recommend to the Convention, rules and essentials of procedure for the most effective conduct of business.

The recommendations shall include the offices to be later filled upon permanent organization; the committees, their scope and number of members, the form of proposals for constitutional revising, and procedure for their consideration; the rules of order for our deliberations, and such other procedural matters as may be deemed necessary.

Mr. HASTINGS, of Saline: I move you that we amend the motion of the gentleman from Douglas by inserting the word "four" in lieu of the word "two"; that is to say, have four members of the committee from each Congressional District instead of two. Many of these congressional districts are exceedingly large and cover a vast amount of territory, and in order to give all of the people in these several congressional districts that comprise a large amount of ground, or territory, a representative, it seems to me that we ought to have "four" instead of "two."

Amendment did not prevail.

The original motion prevailed. . . .

Mr. NORTON, of Polk: I move that the permanent standing committees of the Convention be selected by a Committee on Committees of thirteen members, the chairman of said committee to be selected at large by the Convention, the other members of the committee to be elected, two from each congressional district, by the members from the district, providing that the Committee on Committees shall not designate the chairman of any committee, but that each standing committee be permitted to select a chairman.

Motion prevailed. . . .

MR. TAYLOR: I move that we adjourn until to-morrow morning at 10 o'clock.

Motion prevailed.

At 1 o'clock the Convention adjourned.

40. Statistics Showing Inequalities of Representation

The idea that representatives should represent population groups rather than territorial areas is a comparatively recent development of democracy. At the time of the adoption of the Constitution of the United States the provision basing the delegations in the House of Representatives on the number of people in each state roused considerable opposition. For almost a hundred years there was no provision that the state should elect the members of the House of Representatives from *equal* districts, and consequently a great deal of inequality was to be found in many of the states. In 1872 Congress enacted that the number of representatives to which each state was entitled, should "be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants."¹ Since that time congressional districts have been presumed to be equal in population; and the following tables are given to show how far this equality has been carried out in practice.

It must be recognized that it is impossible to draw the lines of legislative or congressional districts so that they will be absolutely equal in population. It is frequently highly desirable, and quite necessary, to take into consideration natural areas and pre-established political divisions such as counties, towns, and wards. To split up such territorial divisions arbitrarily may in practice result in greater representative inequality than arises from mere differences of numbers.

In the following tables, the more extreme cases have been selected to illustrate the problem. Tables I-IV show the

¹ 17 *U. S. Stat. at Large*, 28.

situation as it exists in the congressional districts; Tables V-VII give similar information for legislative districts (for the lower houses) in the states; and Table VIII deals with the population of the wards in a number of the cities. In each case the population given is according to the census of 1920; and in Table I some striking instances of inequality have been omitted because the legislatures have either largely or partly redistricted the state since that census was taken.¹ Table IV shows the congressional districts grouped in a frequency distribution on the basis of their population. It is natural that they should group themselves around the ratio of population adopted by Congress in making the apportionment, and the table shows how they conform to this standard. The distributions for the past four decades are given in order that the effect of the failure to redistribute the seats of the House of Representatives on the basis of the 1920 census may be compared with a more normal situation.

The upper houses of the state legislatures are often based entirely on the territorial principle of representation, and for that reason Tables V to VII are given for the lower houses only. By means of Table V a comparison of the situation in various states may be made. In order that this may be more accurate, the table includes the vote cast in each district in a recent election where it has been possible to obtain that data. Some of the New England states make no pretense of basing representation on population in either the upper or the lower house. Consequently, even greater inequalities exist in some of those states. This accounts for the extreme situation shown by Tables VI and VII dealing with the size of districts in Vermont and Connecticut. Here again the statistics are for the lower house only.

Another angle of the problem of representation is shown by the material presented in Table IX. Because of the fact that the individual who is elected is chosen by a ma-

¹ *E.g.*, Missouri, 1921; Pennsylvania, 1921; New York, 1922; Maryland, 1922; Virginia, 1922; South Carolina, 1922.

jority (in some cases by a plurality) of the voters in the district, it frequently happens that a large number of voters belonging to the minority party in any state are either greatly under-represented or not represented at all. Table IX shows the extent to which this resulted from the 1924 congressional elections.

SOURCES —Table		I.	Compiled from the <i>Congressional Directory</i> (Washington, 1924), 3-125, and from <i>Statistics of the Congressional and Presidential Election of November 4, 1924</i> (Washington, March 14, 1925.)
	Table II.	II.	<i>Ibid.</i>
	Table III.	III.	<i>Ibid.</i>
	Table IV.	IV.	Compiled from the <i>Congressional Directory</i> , Dec., 1899 (Washington, 1899), 1-123; <i>Ibid.</i> , Jan., 1909 (Washington, 1909), 1-139; <i>Ibid.</i> , Dec., 1917 (Washington, 1917), 3-124; <i>Ibid.</i> , Dec., 1924 (Washington, 1924), 3-125.
	Table V.	V.	Compiled from the <i>Fourteenth Census of the United States, 1920</i> (Washington, 1921), Vol. I, "Population; Number and Distribution of Inhabitants," and the state <i>Manuals, Registers, Blue Books</i> , and <i>Directories</i> of the states listed. In a few instances data was taken from the Constitution or Statutes of the state.
	Table VI.	VI.	Compiled from the <i>Fourteenth Census of the United States, 1920</i> (Washington, 1921), Vol. I, "Population; Number and Distribution of Inhabitants," pp. 645-647, and from B. R. Tuttle (comp.), <i>Walton's Vermont Register, 1925</i> (Rutland, 1924), 412-417.
	Table VII.	VII.	Compiled from the <i>Fourteenth Census of the United States, 1920</i> (Washington, 1921), Vol. I, "Population; Number and Distribution of Inhabitants," p. 188, and from <i>Register and Manual, Connecticut, 1924</i> (Hartford, 1924), 101-102, 478-487, 662-667.
	Table VIII.	VIII.	Compiled from the <i>Fourteenth Census of the United States, 1920</i> (Washington, 1921), Vol. I, "Population; Number and Distribution of Inhabitants," 178-319.
	Table IX.	IX.	"The November Elections," <i>Proportional Representation Review</i> , Apr., 1925, 28-29.

TABLE I

LARGEST AND SMALLEST CONGRESSIONAL DISTRICTS IN SELECTED STATES, 1920

State	Date of Last Act ¹	Largest District			Smallest District		
		Dist. No.	Population	Vote ²	Dist. No.	Population	Vote ³
Alabama.....	1915	9	310,054	18,969	6	170,188	6,672 ³
Arkansas.....	1901	1	330,292	20,094	3	180,348	21,981
California.....	1912	10	516,283	214,705	2	129,357	30,606
Florida.....	1913	4	315,292	40,494	2	187,474	12,158
Illinois.....	1901	7	560,434	197,260	5	158,092	35,620
Indiana.....	1911	7	348,061	157,030	4	179,737	83,810
Michigan.....	1913	1	535,353	113,417	10	198,679	58,500
Mississippi....	1912	3	349,662	9,282 ³	8	177,185	10,278 ³
North Carolina.	1911	5	408,139	74,303	3	202,760	26,116
Ohio.....	1912	14	439,013	122,565	11	167,217	59,966
Oregon.....	1911	1	346,989	114,758	2	160,502	48,589

¹ Date of last statute effecting any redistribution whether complete or partial.

² Vote for Representative in the House, 1924.

³ No contest.

TABLE II

SMALLEST CONGRESSIONAL DISTRICTS IN SELECTED STATES, 1920

State	Dist. No.	Population	Vote 1924
New Jersey.....	11	228,615	62,486
Connecticut.....	5	224,426	62,796
Utah.....	2	219,489	73,933
New Hampshire.....	2	218,241	77,468
Montana.....	1	215,413	69,060
West Virginia.....	4	214,930	92,013
Wisconsin.....	6	214,206	65,110

TABLE III

LARGEST CONGRESSIONAL DISTRICTS IN SELECTED STATES, 1920

State	Dist. No.	Population	Vote 1924
Vermont.....	2	176,596	49,647
Maine.....	1	195,072	66,327
Rhode Island.....	3	210,701	68,177

TABLE IV

DISTRIBUTION OF CONGRESSIONAL DISTRICTS BY POPULATION, 1891-1920

Population of Districts	Number of districts in each population group			
	1920	1911	1901	1891
40,000- 59,999.....			1	1
60,000- 79,999.....	1			1
80,000- 99,999.....		1		1
100,000-119,999.....			1	2
120,000-139,999.....	4	2	1	12
140,000-159,999.....	9	15	20	61
160,000-179,999.....	33	32	60	140
180,000-199,999.....	44	68	120	88
200,000-219,999.....	78	148	91	32
220,000-239,999.....	73	64	46	8
240,000-259,999.....	63	33	24	2
260,000-279,999.....	40	18	5	4
280,000-299,999.....	32	8	7	2
300,000-319,999.....	13	4	3	4
320,000-339,999.....	9	3		
340,000-359,999.....	13	2		
360,000-379,999.....	3	2		
380,000-399,999.....	2			
400,000-419,999.....	3			
420,000-439,999.....	2			
440,000-459,999.....	3		1	
460,000-479,999.....				
480,000-499,999.....				
500,000-519,999.....	1			
520,000-539,999.....	2			
540,000-559,999.....				
560,000-579,999.....	1			
Population not given.....	2	23	1	2
Elected at large from States with more than one represen- tative.....	2	12	9	6

TABLE V

LARGEST AND SMALLEST LEGISLATIVE DISTRICTS IN SELECTED STATES, 1920

State	District	Population	No. of Representatives	Legislative Ratio	Total Vote	Year	Officer
Arkansas.....	Mississippi Stone	47,320 8,779	1 1	47,320 8,779	3,035 938	1920	Gov.
Delaware.....	Wilmington New Castle, 15	110,168 ¹ 1,225	5 1	22,084 1,225	"		
Florida.....	Duval Flagler	113,540 2,442	3 1	37,846 + 2,442	"		
Georgia.....	Fulton Echols	232,606 3,313	3 1	77,535 + 3,313	"		
Illinois.....	50th ² 34th	177,243 75,877	3 3	59,081 25,293 +	88,546 87,560	1924	Legis.
Iowa.....	Polk Osceola	154,029 10,223	2 1	77,014 + 10,223	42,061 2,437	1922	Gov.
Kentucky.....	Letcher-Perry Meade	50,509 9,442	1 1	50,509 9,442	11,335 1,928	1923	Gov.
Louisiana.....	DeSoto St. Bernard	29,376 4,968	1 1	29,376 4,968	"		
Maryland.....	Baltimore City Calvert	733,826 ⁴ 9,744	36 2	23,839 + 4,872	139,719 3,061	1923	Gov.
Massachusetts..	Chelsea Nantucket	30,268 3,166	1 1	30,268 3,166	4,652 650	1922	Gov.
Missouri.....	St. Louis, 5 Hickory	198,103 7,033	4 1	49,525 + 7,033	"		
New Hampshire	Berlin, 4 Hart's Location ⁵	3,403 35	1 1	3,403 35	646 4	1920	Legis.
New York....	Manhattan, 2 Putnam	147,115 10,802	1 1	147,115 10,802	14,076 5,507	1924	Gov.
North Carolina	Edgecombe Tyrrell	37,995 4,849	1 1	37,995 4,849	2,529 1,092	1924	Gov.
Pennsylvania..	Philadelphia, 21 Cameron	181,400 6,297	2 1	90,700 6,297	59,788 1,617	1922	Legis.
Rhode Island..	Providence West Greenwich	237,595 367	25 1	9,503 + 367	53,982 132	1922	Legis.
West Virginia..	Logan Pleasants	41,006 7,379	1 1	41,006 7,379	7,513 2,751	1922	Legis.

¹ Divided into five districts. Population of each district not given.² No recent vote available.³ The population of the nineteen Cook County districts is not given separately. Their average population is 160,684. A conservative estimate would place the population of the largest of these (the 25th) at something over 300,000. Each district elects three representatives. In 1924 the 25th district cast a total vote for members of the state legislature (lower house) of 134,367.⁴ Divided into six districts. Population of each district not given.⁵ Hart's Location elects a representative once every five years.

TABLE VI

POPULATION OF SELECTED VERMONT LEGISLATIVE DISTRICTS, 1920

Town	Population	Vote for Governor, 1922
Burlington.....	22,779	3,286
Rutland City.....	14,954	3,215
Bare City.....	10,008	1,212
Bennington.....	9,982	2,417
St. Johnsbury.....	8,708	1,794
Battleboro.....	8,332	1,985
St. Albans City.....	7,588	1,709
Montpelier.....	7,125	1,954
Rockingham.....	6,231	862
Stratton.....	90	13
Brunswick.....	89	36
Granby.....	70	17
Baltimore.....	62	12
Somerset.....	59	10
Glastenbury.....	40	8

TABLE VII

POPULATION OF SELECTED CONNECTICUT LEGISLATIVE DISTRICTS, 1920

Town	Population	No. of Representatives	Legislative Ratio	No. voters for Legis. 1920
New Haven.....	162,537	2	81,268 +	39,448
Bridgeport.....	143,555	2	71,777 +	24,730
Hartford.....	138,036	2	69,018	32,933
Waterbury.....	91,715	2	45,857 +	20,087
New Britain.....	59,316	2	29,658	10,057
Stamford.....	40,067	2	20,033 +	10,008
Meriden.....	34,764	2	17,382	9,970
Goshen.....	675	2	337 +	173
Lyme.....	674	2	337	186
Marlborough.....	303	1	303	127
Prospect.....	266	1	266	148
Killingworth.....	531	2	265 +	137
Colebrook.....	492	2	246	129
Hartland.....	448	2	224	117
Union.....	257	2	128 +	82

TABLE VIII

LARGEST AND SMALLEST WARDS IN SELECTED CITIES, 1920

City	Largest	Smallest
Bridgeport, Conn.....	24,011	4,597
Fall River, Mass.....	23,917	4,827
Kansas City, Kan.....	29,713	2,209
Louisville, Ky.....	52,087	8,573
Memphis, Tenn.....	9,150	1,424
Nashville, Tenn.....	8,835	1,083
New Haven, Conn.....	22,606	2,717
Philadelphia, Pa.....	82,709	3,747
Reading, Pa.....	12,170	2,278
Rochester, N. Y.....	29,635	2,113
St. Paul, Minn.....	29,806	3,688
Scranton, Pa.....	12,093	1,964
Wilmington, Del.....	18,726	2,473

TABLE IX.

THE VALUE OF 150,000 VOTES.

The following comparisons show how far the single-member district system falls short of giving equality of voting power:

The 154,915 Democratic voters in Georgia elected 12 members.

The 148,173 Democratic voters in Tennessee elected 8 members.

The 148,345 Republican voters in Maine elected 4 members.

The 153,681 Republican voters in Oregon elected 3 members.

The 149,226 Republican voters in Maryland elected 2 members.

More Votes but Fewer Members

The 120,793 Democratic voters in Alabama elected 10 members.

The 148,173 Democratic voters in Tennessee elected 8 members.

The 283,463 Democratic voters in Oklahoma elected 6 members.

The 353,700 Democratic voters in New Jersey elected 2 members.

The 481,400 Democratic voters in Pennsylvania elected no members.

The 47,495 Republican voters in Vermont elected 2 members.

The 86,793 Republican voters in Texas elected 1 member.

The 179,614 Republican voters in North Carolina elected no members.

It is such results as these, so obviously in violation of the principles on which our government was founded, that first suggested several generations ago the need of a change from the single-member district or any other majority or plurality system of electing representatives. And an analysis of such results revealed the remedy—the election of representatives from *multi-member* districts, each by enough *agreeing voters* to deserve a spokesman. This is the remedy, of course, which has come to be called *proportional representation*. . . .

41. The Cleveland Provision for Proportional Representation

Cleveland adopted its present charter, providing for the city manager form of government, in November, 1921.

The old system of electing the council from thirty-three wards was swept away, and in its place the new charter provides a body of twenty-five, to be chosen from four districts. The number of councilmen from a district varies from five to seven according to population. With a population of nearly a million, Cleveland is the largest city in the United States to adopt the Hare system of representation, and it was immediately recognized that the experiment would be watched closely and critically by other large municipalities. For this reason, the proponents of the Hare system took special care to work out as carefully as possible the rules for its operation. The following extracts from the Cleveland charter contain these provisions, and show how the members of the council are nominated and elected.¹

SOURCE—*Charter of the City of Cleveland* (Cleveland, 1923), 40-45.

NOMINATIONS BY PETITION

Section 158. Any person eligible to the Council may be placed in nomination therefor by a petition filed in his behalf with the election authorities and signed by at least five hundred electors of the district for which he seeks to be a candidate. Signatures to nominating petitions need not all be appended to one paper but to each separate paper there shall be attached an affidavit of the circulator thereof stating that each signature thereto was made in his presence and is the genuine signature of the person whose name it purports to be. Each signer of a petition shall sign his name in ink or indelible pencil and, after his name, shall designate his residence by street and number, or other description sufficient to identify the place, and give the date when his signature was made. If any elector sign petitions for more than one candidate his signature shall be invalid except as to the petition first signed.

¹ An unsuccessful attempt was made (August 11, 1925) to repeal these provisions by using the initiative.

NOMINATING PETITION PAPERS.

Section 159. The form of nominating petition papers shall be substantially as follows:

We, the undersigned, hereby present

.....
 whose residence is.....
 Cleveland, Ohio, as a candidate for the Council, to be voted for
 at the election to be held on the.....day of
 November, 19.....; and we individually certify that we are
 qualified to vote for candidate for the Council, and that we have
 not signed a petition nominating any other person for the Council
 to be voted for at such election.

Name	Street and Number	Date
.....		
.....		
.....		

State of Ohio,
 Cuyahoga County, ss.:

.....being duly sworn
 deposes and says that he is the circulator of this petition paper
 and that the signatures appended thereto were made in his pres-
 ence and are the genuine signatures of the persons whose names
 they purport to be.

Signed.....

Subscribed and sworn to before me this.....
 day of....., 19.....

.....

Notary Public.

FILING AND VERIFICATION OF PETITIONS.

Section 160. All separate papers comprising a nominating petition shall be assembled and filed with the election authorities as one instrument at least forty days prior to the first Tuesday following the next succeeding first Monday in November. Within ten days after the filing of a nominating petition the election

authorities shall notify the person named therein as a candidate whether the petition is found to be signed by the required number of qualified electors. Any eligible person placed in nomination as hereinbefore provided shall have his name printed on the ballots if, within five days after such notification, he shall have filed with the election authorities a written acceptance of the nomination.

BALLOTS.

Section 161. Ballots used in electing members of the City Council shall be without party mark or designation, and shall be marked by the electors according to the instructions printed thereon under the heading "Directions to Voters," as specified in this section. . . .

REGULAR CITY ELECTION

District.....

November....., 19....

Directions to Voters

Put the figure 1 opposite the name of your first choice. If you want to express also second, third and other choices, do so by putting the figure 2 opposite the name of your second choice, the figure 3 opposite the name of your third choice; and so on. In this way you may express as many choices as you please. The more choices you express, the surer you are to make your ballot count for one of the candidates you favor.

This ballot will not be counted for your second choice, unless it is found that it cannot help your first choice; it will not be counted for your third choice unless it is found that it cannot help either your first or your second, etc.

A ballot is spoiled if the figure 1 is put opposite more than one name. If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots, and get another one from him.

	[JOHN DOE]
	[RICHARD ROE]
	[WILLIAM SMITH]
	[HENRY BROWN]

ROTATION OF NAMES.

Section 162. The names of candidates for the Council shall be printed on the ballots in rotation as follows:

The ballots for each district shall be printed in as many series as there are candidates for the Council for such district. The whole number of ballots to be printed for the district shall be divided by the number of series and the quotient so obtained shall be the number of ballots printed in each series. In printing the first series of ballots the names of candidates shall be arranged in the alphabetical order of their surnames. After printing the first series the first name shall be placed last and the next series printed, and this process shall be repeated until each name shall have been printed first in one series. The ballots so printed shall be combined in tablets to be supplied to the various voting places. Each tablet shall contain substantially the same number of ballots from each series, and, so far as practicable, the ballots shall be combined in such manner that two or more from the same series shall not be together in a tablet.

BLANK SPACE ON BALLOTS.

Section 163. A blank space shall be left on the ballots below the printed names of the candidates. In any such space an elector may write the name of any person eligible to the council, and votes cast for such persons shall be counted as though for candidates whose names are printed on the ballots.

RULES FOR COUNTING BALLOTS.

Section 164. Ballots cast for the election of members of the Council shall be counted and the results determined by the election authorities according to the following rules:

(a) On all ballots a cross shall be considered equivalent to the figure 1. So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.

(b) The ballots shall first be sorted and counted at the several voting precincts according to the first choices of the voters. At each voting precinct the ballots cast for each candidate as first

choice shall be put up in a separate package, which shall be properly marked on the outside to show the number of ballots therein and the name of the candidate for whom they were cast. The ballots declared invalid by the precinct officials shall also be put in a separate package, properly marked on the outside. All the packages of each precinct, together with a record of the precinct count, shall be promptly forwarded to the central election authorities as directed by them, and the counting of the ballots cast in each district shall thereafter be carried on by a central counting board for each such district, appointed by the central election authorities and acting under their direction.

(c) After the review of the precinct count of its district by the central district counting board, and the correction of any errors discovered therein, the first choice votes of each candidate shall be added and tabulated. This completes the first count.

(d) The whole number of valid ballots cast in the district shall then be divided by a number greater by one than the number of seats to be filled in the district. The next whole number larger than the resulting quotient is the quota or constituency that suffices to elect a member.

(e) All candidates the number of whose votes on the first count equals or exceeds the quota shall then be declared elected.

(f) All votes obtained by any candidate in excess of the quota shall be termed his surplus.

(g) Any surpluses there may be shall next be transferred, the largest surplus first, then the next largest, and so on, according to the following rules.

(h) In the transfers of a surplus, transferable ballots up to the number of votes in the surplus shall be transferred to the continuing candidates marked on them as next choices, in accordance with rule (m). The particular ballots to be taken for transfer as the surplus of a candidate shall be obtained by taking as nearly an equal number of ballots as possible from the transferable ballots that have been cast for him in each of the voting precincts. All such surplus ballots shall be taken as they happen to come without selection.

(i) "Transferable ballots" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained. A "continuing candidate" is a candidate as yet neither elected nor defeated.

(j) Whenever a ballot is transferred from one candidate to another, it shall be tallied or otherwise recorded by a tally clerk assigned to the candidate to whom it is being transferred. Each tally clerk shall take care not to receive for his candidate by transfer more ballots than are required to complete the quota.

(k) The votes standing to the credit of each candidate shall be added and a tabulation of results made whenever a comparison of the votes of the several candidates is necessary to determine the next step in the procedure. Each tabulation, together with the transfers of ballots made since the preceding tabulation, is referred to in this section as a "count."

(l) After the transfer of all surpluses (or after the first count if no candidate received a surplus) every candidate who has no votes to his credit shall be declared defeated. Thereupon the candidate lowest on the poll as it then stands shall be declared defeated and all his transferable ballots transferred to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter in accordance with rule (m). Thereupon the candidate then lowest shall be declared defeated and all his transferable ballots transferred in the same way. Thus the lowest candidates shall be declared defeated one after another and their transferable ballots transferred to continuing candidates.

(m) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the vote of any candidate becomes equal to the quota, he shall immediately be declared elected and no further transfer to him shall be made.

(n) When candidates to the number of seats to be filled have received a quota and have therefore been declared elected, all other candidates shall be declared defeated and the election shall be at an end; or when the number of continuing candidates is reduced to the number of seats still to be filled, those candidates shall be declared elected whether they have received the full quota or not and the election shall be at an end.

(o) If when a candidate is to be declared defeated two or more candidates at the bottom of the poll have the same number of votes, that one of the tied candidates shall first be declared defeated who was credited with the fewest votes at the end of the count next preceding, and any further tie shall be decided on

the same principle. Any tie not otherwise provided for in this section shall be decided by lot.

(p) In the transfer of the ballots of any candidate who has received ballots by transfer, those ballots shall be transferred first which he received by the count next preceding, and the rest shall be transferred in the reverse order of the counts by which he received them.

(q) On each tabulation a record shall be kept, under the designation "ineffective ballots," of those ballots which no longer stand to the credit of any elected or continuing candidate and which are not transferable.

(r) Every ballot which is transferred from one candidate to another shall be stamped or marked so that its entire course from candidate to candidate throughout the counting can be conveniently traced.

(s) The ballots shall be preserved by the election authorities until the end of the term for which the members of the Council are being elected.

(t) Any re-count of the ballots shall be made by the central election authorities in accordance with this section except that the reference to voting precincts may be disregarded. In any re-count every ballot shall be made to take the same course that it took in the original counting, unless there is discovered a mistake that required its taking a different course. In such case any required changes shall be made in the course taken by the ballot. These principles shall apply also to the correction of any error that may be discovered during the original counting.

(u) The candidates or their agents, representatives of the press, and, so far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public shall be afforded every facility for being present and witnessing these operations.

(v) The Council shall have power to provide for the use of mechanical or other devices for marking and sorting the ballots and tabulating the results, and to modify the form of the ballot, the directions to voters, and the details in respect to the method of counting and transferring ballots accordingly; provided, however, that no change shall be made which will alter the principles of the voting or of the counting.

42. A Proportional Representation Tally Sheet

The easiest method of seeing what the Hare system of proportional representation really means is to follow through an actual count. The accompanying chart shows the final tally of the ballots in the third district in Cleveland in the first proportional representation election, November 6, 1923. This district had a population of 196,732 in 1920 and was entitled, in 1923, to six seats in the council. There were 25,995 registered voters, of whom 20,740 cast valid ballots. Eighteen candidates had been nominated, and these received the bulk of the votes, although each of four others received scattering choices.

In the following chart a figure in *italics* indicates that the given number of ballots was transferred. This applies equally to transfers due to surplus votes and to those due to elimination of the weaker candidates. **Bold-faced** fig-

GENERAL RESULT

REGULAR MUNICIPAL ELECTION FOR CITY COUNCILMEN

NO. TO BE ELECTED 6 QUOTA 2963	1ST COUNT	2D COUNT		3D COUNT		4TH COUNT		5TH COUNT		6TH COUNT	
		Transfer of Finkle's Surplus		Transfer of Heinrich's Votes		Transfer of Harris' Votes		Transfer of Thomas' Votes		Transfer of Schulze's Votes	
		Ballots	Results	Ballots	Results	Ballots	Results	Ballots	Results	Ballots	Results
1 Bronstrup (R) . . .	1387	1065	2452	15	2467	7	2474	15	2489	12	2501
2 Butler	392	36	428	5	433	5	438	12	450	7	457
3 Carroll (D)	723	91	814	4	818	6	824	7	831	9	840
4 Ferris	790	45	835	4	839	26	865	4	869	56	925
5 Finkle (R)	5314	<i>2361</i>	2963								
6 Fleming (R)	2915	48	2963								
7 Harris	164	27	191	4	195	<i>195</i>					
8 Heinrich	130	56	186	<i>186</i>							
9 Lyons (D)	427	21	448	7	455	10	465	4	469	5	474
10 McGinty (D)	2087	293	2380	13	2393	27	2420	14	2434	10	2444
11 Murrell	858	99	957	7	964	9	973	24	997	5	1002
12 O'Reilly (R)	622	165	787	3	790	8	798	7	805	10	815
13 Reynolds (D)	417	42	459	7	466	9	475	8	483	7	490
14 Schulze	245	24	269	17	286	7	293	2	295	<i>295</i>	
15 Thomas	166	30	196	3	199	5	204	<i>204</i>			
16 Walsh (D)	2069	76	2145	15	2160	3	2163	14	2177	31	2208
17 Wing	1650	113	1763	23	1786	33	1819	12	1831	69	1900
18 Zupnik	380	119	499	12	511	5	516	1	517	10	527
Scattering	4	1	5	5							
Ineffective Ballots . .				52	52	35	87	80	167	64	231
Totals	20740				20740		20740		20740		20740

sistent demand for the initiative and referendum. For a number of years, there had been on the statute books a "public opinion law" which authorized an advisory referendum under certain conditions, but the results of votes taken under this measure had no binding legal effect. The advocates of the initiative and referendum wanted a device which the legislature could not ignore.

Before the convention met, the people had voted, under the advisory law, to instruct the delegates "to support the initiative and referendum so as to give the voters the power to accept or reject at the polls measures (including constitutional amendments) that have been proposed by petition, or to reject at the polls measures that have been passed by the General Court."¹ Every district voted to instruct its delegates to support this proposition, although only a very light vote was cast. In no place was the vote in favor of it equal to a majority of those voting for delegates to the convention. Nevertheless, the advisory vote strengthened the position of the advocates of direct legislation and made it a foregone conclusion that the convention would propose some measure on the subject.

During the sessions of the convention the proposal for the initiative and referendum aroused more interest and caused more discussion than any other topic. There was almost continuous debate on the subject for over three and one-half months, the record of which fills a large volume of more than one thousand pages of small print.² Hundreds of amendments were proposed to the provision as first submitted. Many of these were adopted; and when the proposal was finally voted, it was found to comprise a very conservative and cumbersome enactment. The amendment, as proposed by the convention, was adopted by the people in 1918, by a vote of 171,646 to 162,103.

In spite of its unwieldy nature and restricted applica-

¹ R. L. Bridgman, *Massachusetts Constitutional Convention of 1917* (Boston, 1923), 42-43.

² *Debates in the Massachusetts Constitutional Convention, 1917-1918* (Boston, 1918), Vol. II.

tion, this provision for direct legislation has been used a number of times in Massachusetts. The results have not always been those which its framers anticipated, but in general the device has given a fair amount of satisfaction. The text of the amendment is incorporated here, not because it illustrates a perfect type of initiative and referendum article, but rather because it contains all of the provisions of such an article to be found in other constitutions, and in addition has a number of unique features which are worthy of study.

SOURCES—*Debates in the Massachusetts Constitutional Convention, 1917-1919* (Boston, 1920), IV, 30-35; *General Laws of Massachusetts* (Boston, 1921), I, pp. c-cvi; *Acts and Resolves passed by the General Court of Massachusetts, 1923* (Boston, 1923), 52-62; *Manual for the Use of the General Court, 1923-24* (Boston, 1923), 102-112; *Constitution of the Commonwealth of Massachusetts* (Boston, 1922), 52-62; Bridgman, R. L., *Massachusetts Constitutional Convention of 1917* (Boston, 1923), 236-245.

ART. XLVIII.

I. Definition.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws enacted by the general court, to the people for their ratification or rejection.

THE INITIATIVE.

II. Initiative Petitions.

SECTION 1. Contents.—An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

SECTION 2. Excluded Matters.—No measure that relates to religion, religious practices or religious institutions; or to the ap-

pointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection,¹ shall be subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition. The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

SECTION 3. *Mode of Originating.*—Such petition shall first be signed by ten qualified voters of the commonwealth and shall then be submitted to the attorney-general, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or

¹ This amendment prohibited the establishment of any religion or the appropriation of public funds in aid of any church.—EDITOR.

submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they shall be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

SECTION 4. *Transmission to the General Court.*—If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. Legislative Action. General Provisions.

SECTION 1. *Reference to Committee.*—If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

SECTION 2. *Legislative Substitutes.*—The general court may, by resolution passed by yea and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years . . . , submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. *Legislative Action on Proposed Constitutional Amendments.*

SECTION 2. *Joint Session.*—If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.

SECTION 3. *Amendment of Proposed Amendments.*—A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of yeas and nays if called for by any member.

SECTION 4. *Legislative Action.*—Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

SECTION 5. *Submission to the People.*—If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one-fourth of all members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment

shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. *Legislative Action on Proposed Laws.*

SECTION 1. *Legislative Procedure.*—If an initiative petition for a law is introduced into the general court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.

SECTION 2. *Amendment by Petitioners.*—If the general court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general, filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first

Wednesday of the following July, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.

VI. *Conflicting and Alternative Measures.*

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

. . . .

THE REFERENDUM.

I. *When Statutes shall take Effect.*

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. *Emergency Measures.*

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each house voting

thereon, the law shall not be an emergency law; but if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect; but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law.

III. *Referendum Petitions.*

. . . .

SECTION 2. *Excluded Matters.*—No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

SECTION 3. *Mode of Petitioning for the Suspension of a Law and a Referendum thereon.*—A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers. . . . If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the commonwealth, then the operation of such law shall be suspended, and the secretary of the common-

wealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

SECTION 4. *Petitions for Referendum on an Emergency Law or a Law the Suspension of which is not asked for.*—A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. . . . If such petition. . . is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the commonwealth protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people. . . .

GENERAL PROVISIONS.

I. Identification and Certification of Signatures.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. . . . The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the constitution, and each law, submitted to the people, shall be described on the ballots by a description to be determined by the attorney-general, subject to such provision as may be made by law, and the secretary of the commonwealth shall give each question a number and cause such question. . . to be printed on the ballot in the following form:—

In the case of an amendment to the constitution: Shall an amendment to the constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

YES.	
NO.	

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

YES.	
NO.	

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.

V. The Veto Power of the Governor.

The veto power of the governor shall not extend to measures approved by the people.

VI. *The General Court's Power of Repeal.*

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

....

44. **An Initiated Amendment, with Arguments from a Publicity Pamphlet**

Ten states now issue some form of publicity pamphlet to give the voters information concerning the initiative and referendum measures which are presented to them.¹ These pamphlets vary in size from post-cards in Ohio to thick brochures of 80,000 words in California (1922). In addition to the text of the proposition to be voted upon, there are usually printed the arguments presented by those in favor and those opposed to the measure. If a large number of long measures is to be submitted, the cost of publishing such a pamphlet may be considerable. California in 1922 spent \$50,000 for this purpose. Some of the states print the arguments for and against the bill free of charge, and it is customary for them to limit the length. In Arizona there is no restriction upon the space an argument may occupy; but those who want it placed in the pamphlet must pay its cost. This, of course, operates to hold down the length. In the following case the opponents of the measure failed to have an argument published. Yet, in spite of the fact that the voters were given only one side of the discussion, the amendment lost by a vote of 11,631 to 22,286 (November 7, 1916). This was one of the few attempts that have been made to institute a unicameral state legislature by a referendum vote.²

SOURCE—*Initiative and Referendum Publicity Pamphlet, State of Arizona, 1916* (Tucson, 1916), 63-64.

¹ R. C. Brooks, *Political Parties and Electoral Problems* (New York, 1923), 473.

² F. A. Ogg and P. O. Ray, *Introduction to American Government* (2nd ed., New York, 1925), 631.

The following is the form and number in which the question will be printed on the ballot:

PROPOSED AMENDMENT TO THE CONSTITUTION.
PROPOSED BY INITIATIVE PETITION.

AN ACT TO AMEND ARTICLE IV, OF THE CONSTITUTION OF THE STATE OF ARIZONA, "Abolishing State Senate."

If you favor the above law, vote YES; if opposed, vote NO.

112 Yes.

113. No.

(On Official Ballots Nos. 112 and 113).

AN ACT

TO AMEND ARTICLE IV, OF THE CONSTITUTION OF THE STATE OF ARIZONA.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARI[Z]ONA:

That Section 1 of Subdivision 1 of Article IV of the Constitution of the State of Arizona is hereby amended to read as follows:

["]Section 1. The legislative authority of the State shall be vested in a legislature consisting of a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution, and to enact or reject such laws and amendments at the polls independent of the legislature, and they also reserve for use at their own option, the power to approve or reject at the polls any act, or item, section or part, of any act of the legislature."

That Section 1 of Subdivision 2 of Article IV of the Constitution of the State of Arizona is hereby amended to read as follows:

"Section 1. (a) Until otherwise provided for by law, the House of Representatives shall consist of thirty-five (35) members, and shall be apportioned among the several counties as follows: Apache County (1) one, Cochise County (7) seven, Coconino County (1) one, Gila County (3) three, Graham County (2) two, Greenlee County (2) two, Maricopa County (6) six, Mohave County (1) one, Navajo County (1) one, Pima County

(3) three, Pinal County (1) one, Santa Cruz County (1) one, Yavapai County (4) four, Yuma County (2) two.

[“(b) It is the intent and purpose of the people of the State of Arizona, in the enactment of this amendment to abolish the State Senate and to confer upon the remaining house all of the authority and jurisdiction heretofore conferred upon both houses by the Constitution without disturbing the remainder of the Constitution and in all cases where the State Senate has heretofore had conferred upon it any powers or the performance of any duties, all of such powers shall be exercised by, and all of such duties performed by the House of Representatives.

[“(This Amendment shall be in effect on and after January the first, 1918.”)] Filed July 6, 1916. SIDNEY P. OSBORN,
Secretary of State.

ARGUMENT.

(Affirmative.)

Submitted by
STATE FEDERATION OF LABOR.

In favor of the measure designated on the official ballot as follows:

PROPOSED AMENDMENT TO THE CONSTITUTION. PROPOSED BY INITIATIVE PETITION.

AN ACT TO AMEND ARTICLE IV, OF THE CONSTITUTION OF THE STATE OF ARIZONA, “Providing for the abolition of the State Senate.”

If you favor the above law, vote YES; if opposed, vote NO.

112 Yes.

113 No.

ARGUMENT IN FAVOR OF THE ABOVE AMENDMENT.

The strongest argument against a one house legislature is that the second house is a check on bad legislation because a bill must pass both bodies, yet the same impediment applies to good measures, and the necessity for it does not exist as the people through the referendum approve or disapprove legislation.

The two houses permit a legislator to fool his constituents by introducing measures promised them in his house, and killing them in the other; or, as in our last legislature, one house threatens to, and actually holds up needed legislation because the other declines to pass an obnoxious measure.

Measures opposed by special interests are easily defeated in the two house system, because it is only necessary to control one house, and there are two chances with that system to one with the other. The lobbyist attempts to defeat a measure in the committee, and failing there, concentrates his efforts on whichever house offers the best chance to block it. With one house the people are in touch with their representative and can recall him should he oppose the purpose for which he was elected.

A conference committee appointed by the presiding officers is now the real legislature and legislation is secured by trading. The House to pass its bills accepts Senate bills, and vice versa. The majority of bills pass in the closing days. The rest of the time allotted is spent in preliminaries, appointing committees, playing politics, and squabbling over points of factional advantage.

One house would be representative because the voter would elect fewer representatives and would know which one was responsible for any action. Responsible to a people armed with the recall, it will be solicitous of public approval, and will readily react to criticism, while in a two house system the individual member, is shielded from blame by being safely lost in the divided responsibility of the two chambers. In one house the individual would be conspicuous and his responsibility would be clearly appreciated by the people, making it more difficult for him to be corrupted.

ARIZONA STATE FEDERATION OF LABOR,

B. T. WILKINSON, President.

45. Rules of the Massachusetts General Court

The rules of procedure used in the General Court of Massachusetts are divided into three schedules: the Rules of the Senate, the Rules of the House of Representatives, and the Joint Rules of the Senate and the House of Representatives. Of the three, the last is by far the most important, mainly because of the joint committee system

under which all important legislation is considered by a body composed of representatives of both branches of the General Court. So important have the joint committees become that their hearings frequently attract more attention from the public and in the press than the plenary sessions of either house.

In the extracts from the rules given below, some of the more distinctive and interesting features of Massachusetts procedure may be seen. The provisions of these rules have often been praised by students of legislative procedure as the best in any legislative body in America.¹ What is perhaps still more important, the General Court differs from many other legislative bodies in that it strictly adheres to its rules as though they were a code of honor. The extracts here presented are confined to the Rules of the House and the Joint Rules and concern, for the most part, the devices which have been adopted to prevent delays and the crowding of bills toward the end of the session. The former are based on the revision of 1874, together with subsequent amendments; the latter were revised in 1923.

SOURCE—*Manual for the Use of the General Court for 1923-1924* (Boston, 1923), 575-605, 615-633.

RULES OF THE HOUSE OF REPRESENTATIVES.

26. The committee on Bills in the Third Reading shall examine and correct the bills which are referred to it, for the purpose of avoiding repetitions and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the language of existing statutes; provided, that any change in the sense or legal effect, or any material change in construction, shall be reported to the House as an amendment. The committee may consolidate into one bill any two or more related bills referred to it, whenever legislation may be simplified thereby. . . .

27. The committee on Engrossed Bills shall carefully examine

¹ P. S. Reinsch, *American Legislatures and Legislative Methods* (New York, 1907), 174. An excellent account of procedure in the Massachusetts General Court will be found in L. A. Frothingham, *Brief History of the Constitution and Government of Massachusetts* (Cambridge, 1916), 90-128.

and compare engrossed bills, and report them rightly and truly engrossed, when found to be so, without delay. . . .

28. Petitions, orders, resolutions and other papers intended for presentation, bills and resolves proposed to be introduced on leave, and reports of state officers, shall first be deposited with the Clerk, and, not later than the fifth legislative day thereafter, the Speaker shall, before the Orders of the Day are considered, present the same to the House, when they, in the case of bills, resolves and resolutions, shall be read, and shall, by the Speaker, with the consent of the House, be referred to the appropriate committee; and all such bills, resolves and resolutions shall be printed under the direction of the Clerk. . . .

29. Any petition remaining in the hands of the Clerk subsequent to five o'clock in the afternoon on the second Saturday of the session, for the reason that no bill or resolve embodying the legislation prayed for has been presented, shall be forthwith submitted by him to the Speaker, and by him, at the legislative session next succeeding, be referred to the next annual session. This rule shall not be rescinded or revoked or suspended except by a vote of four fifths of the members present and voting thereon. . . .

33. On or before the second Wednesday in March, committees shall make final report upon matters referred to them prior to that day. . . .

40. All motions contemplating legislation shall be founded upon petition, or upon bill or resolve proposed to be introduced on leave, except as follows:—

The committee on Ways and Means may originate and report appropriation bills. . . . Messages from the Governor shall, unless otherwise ordered, be referred to the appropriate committee, which may report by bill or otherwise thereon. A similar disposition shall, unless otherwise ordered, be made of reports by state officers and recess committees authorized to report to the Legislature, and similar action may be had thereon. . . .

45. Bills from the Senate, after their first reading, shall be referred to a committee of the House, unless they were reported to the Senate by a joint committee. . . .

47. No bill shall be proposed or introduced unless received from the Senate, reported by a committee, or moved as an amendment to the report of a committee; provided, that the House may grant special leave to a member to introduce a bill; but, when

leave is asked for the introduction of a bill, it shall be read for information before the question is put on granting leave; and, if leave is granted, it shall be committed before it is ordered to a second reading. . . .

49. When a bill, resolve, order, petition or memorial has been finally rejected or disposed of by the House, no measure substantially the same shall be introduced by any committee or member during the same session.

50. Bills in their third reading shall be referred to the committee on Bills in the Third Reading for examination, correction and report. . . .

51. No bill shall pass to be engrossed without having been read on three several days.

52. Engrossed bills shall be referred to the committee on Engrossed Bills for examination, comparison, and report. . . .

56. Bills from the Senate, after their first reading, when not referred to a committee of the House, bills favorably reported to the House by committees, and bills the question of the rejection of which is negatived, shall be placed in the Orders of the Day for the next day, and, if they have been read but once, shall go to a second reading without question. . . .

58. Bills ordered to a third reading shall be placed in the Orders of the Day for the next day for such reading. . . .

61. No matter which has been duly placed in the Orders of the Day shall be discharged therefrom, or considered out of the regular course. This rule shall not be rescinded or revoked or suspended except by a vote of four fifths of the members present and voting thereon. . . .

JOINT RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.

1. Joint standing committees shall be appointed at the beginning of the political year as follows:—

A committee on Constitutional Law; A committee on Counties; A committee on Highways and Motor Vehicles; A committee on Labor and Industry; A committee on Public Safety; A committee on Social Welfare; A committee on State House; A committee on Water Supply;

Each to consist of three members on the part of the Senate, and eight on the part of the House;

A committee on Agriculture; A committee on Banks and Banking; A committee on Cities; A committee on Conservation; A

committee on Education; A committee on Election Laws; A committee on Harbors and Public Lands; A committee on Insurance; A committee on Legal Affairs; A committee on Mercantile Affairs; A committee on Metropolitan Affairs; A committee on Military Affairs; A committee on Municipal Finance; A committee on Power and Light; A committee on Public Health; A committee on Public Institutions; A committee on Public Service; A committee on Railroads; A committee on State Administration; A committee on Street Railways; A committee on Taxation; A committee on Towns;

Each to consist of four members on the part of the Senate and eleven on the part of the House.

Matters referred by either the Senate or the House to its committee on the Judiciary or on Ways and Means shall be considered by the respective committees of the two branches, acting as joint committees, when, in the judgment of the chairman of the respective committees of the two branches, the interests of legislation or the expedition of business will be better served by such joint consideration. Matters may also be referred respectively to the committees on the Judiciary and on Ways and Means, of the two branches, as joint committees.

The committees on Rules, together with the presiding officers of the two branches, acting concurrently, may consider and suggest such measures as shall, in their judgment, tend to facilitate the business of the session. . . .

4. Joint committees may report by bill, resolve, or otherwise, to either branch, at their discretion, having reference to an equal distribution of business between the two branches, except that money bills shall be reported to the House; and except that when a report is made from any committee to either branch, and the subject-matter thereof is subsequently referred therein to a joint committee, such committee shall report its action to the branch in which the original report was made.

5. Reports of joint committees may be recommitted to the same committees at the pleasure of the branch first acting thereon, and bills or resolves may be recommitted in either branch, but no such recommitment shall be made after the fourth Wednesday in March. A concurrent vote shall, however, be necessary for the recommitment of such reports, bills, or resolves, with instructions. After recommitment, report shall, in all cases, be made to the branch originating the recommitment. . . .

10. Joint committees shall make final report upon all matters previously referred to them, on or before the second Wednesday in March; but, except as provided in Rule No. 30, the time within which they are required to report upon such matters may be extended, by concurrent vote, until a day not later than the second Wednesday in April. When the time within which such joint committees are required to report has expired, all matters upon which no report has then been made shall, within three legislative days thereafter, be reported by the chairman of the committee on the part of the branch in which they were respectively introduced, with a recommendation of reference to the next annual session under this rule. This rule shall not be rescinded, amended or suspended, except by a concurrent vote of four-fifths of the members of each branch present and voting thereon. . . .

12. Resolutions intended for adoption by both branches of the General Court, and petitions, memorials, bills and resolves introduced on leave, and all other subjects of legislation, except reports required or authorized to be made to the Legislature, deposited with the Clerk of either branch subsequently to five o'clock in the afternoon on the second Saturday of the annual sessions, shall, when presented, be referred to the next annual session; but this rule shall not apply to petitions in aid of, and remonstrances against, legislation already introduced and pending; nor shall it apply to a petition offered in place of a former one having in view the same object, upon which, before reference to a committee, leave to withdraw was given because the same was not in proper form, provided that such subsequent petition is deposited with the Clerk of either branch within one week from the day on which leave to withdraw was given; nor shall it apply to a bill or resolve introduced on leave or to a resolution presented subsequently to five o'clock in the afternoon on the second Saturday of the annual session, when such bill, resolve or resolution is based upon the report of a joint committee which has been made in compliance with instructions to report facts or to investigate, provided the said bill, resolve or resolution is introduced within one week after the committee's report is submitted. This rule shall not be rescinded, amended or suspended, except by a concurrent vote of four-fifths of the members of each branch present and voting thereon: *provided, however*, that, except by unanimous consent, it shall not be suspended with reference to

a petition for legislation when such petition is not accompanied by a bill or a resolve embodying the legislation requested. . . .

30. All motions or orders extending the time within which joint committees are required to report shall be referred without debate to the committees on Rules of the two branches, acting concurrently, who shall report recommending what action should be taken thereon. No such extension beyond the second Wednesday in April shall be granted, against the recommendation of the committees on Rules of the two branches, acting concurrently, except by a four-fifths vote of the members of each branch present and voting thereon. This rule shall not be rescinded, amended or suspended, except by a concurrent vote of four-fifths of the members of each branch present and voting thereon. . . .

46. Charles McCarthy on Legislative Reference Libraries

Dr. Charles McCarthy was a pioneer in the legislative reference field. For many years the English government had employed experts to aid Parliament in the technical phases of legislation, but not until New York established the Legislative Reference Section of the State Library in 1890, was the legislature of any American state provided with a similar service. A few years later the Wisconsin legislature established its Legislative Reference Library, and Dr. McCarthy was chosen the first director.

Agencies of this nature may render the legislator two distinct types of service. "On the one hand they may furnish him with information bearing on the substantive matter of the legislation which he has in mind. This is the function of legislative reference libraries, so-called. On the other hand, they may provide the legislator with expert assistance in drafting the text of the proposed legislation. It need hardly be pointed out that the best results are to be obtained when both these services are furnished to the legislator. Nevertheless, not a few of our states have made provision for one of the two without the other."¹

Of the early legislative librarians, Dr. McCarthy was by far the most successful. For many years his work was

¹G. A. Weber, *Organized Efforts for the Improvement of Methods of Administration in the United States* (New York, 1919), 311.

considered a model, and thirty other states followed, in whole or in part, the Wisconsin experiment. In the following article Dr. McCarthy describes the methods which he used in the conduct of his library and in his relations with the legislature.

SOURCE—*Papers and Proceedings of the 27th General Meeting of the American Library Association, Portland, Oregon, 1905, 242-246.*

In 1901 the historical society, whose historical library had rendered great aid to the legislature, was removed from the capital, and the legislature provided for a small reference library to take its place. The author of this article was engaged to take charge of that library. It became apparent at once that the demands of this library were of a peculiar nature, which could not be readily met by the ordinary library methods or by the ordinary library material.

A plan was devised which has been since carried out as far as the resources given by the legislature would permit. We found that there was no co-operation between the different states of this Union in the matter of getting the history of legislation. We found that there was a constant demand for a history of what had occurred in Europe or in any state of the Union, upon a certain subject of interest to the people of this state. We tried to supply this demand by getting such indexes of up-to-date legislation as were published, by getting the bills from other states as well as the documents explanatory of legislative movements in other states, and arranging these under the subjects so they would be immediately at the service of all who desired to see them. We soon found that even this material did not solve the problem. We found it necessary to clip newspapers from all over the country and to put the clippings in book form, to carefully index them and put them also with the subjects. We went over our own bills and carefully indexed them back for four sessions and by noting the subjects which were contained in those bills we anticipated the problems with which the legislature had to grapple. . . .

Our short experience has taught us many things. We have been convinced because of the success of our work and our methods that there is a great opportunity to better legislation through work of this kind. We are convinced that the best way to better legislation is to help directly the man who makes the laws. We bring home to him and near to him everything which will help

him to grasp and understand the great economic problems of the day in their fullest significance and the legislative remedies which can be applied and the legislative limitations which exist. We must take the theory of the professors and simplify it so that the ordinary layman can grasp it immediately and with the greatest ease. The ordinary legislator has no time to read. His work is new to him, he is beset with routine work, he has to have conferences with his friends upon political matters, he is beset by office-seekers and lobbyists and he has no time to study. If he does not study or get his studying done for him he will fall an easy prey to those who are looking out to better their own selfish ends. Therefore we must shorten and digest and make clear all information that we put within his reach. This is a tremendous task, but not an impossible one. We must first of all get near to the legislator, even as the lobbyist does. I do not mean that we must use the evil methods of the lobbyist, but we must win his confidence and his friendship and understand him and his prejudices. We study him just as the lobbyist does. Above all, we must not be arrogant, presumptive, opinionated or dogmatic. We are dealing with men who are as a rule keen and bright, who as a rule have made a success of business life. We must always remember that we are but clerks and servants who are helping these men to gather data upon things upon which we have worked as they have worked at their business. We must keep our private opinions to ourselves and let the evidence speak for itself. We are not doing this work to convert, but to help and to clear up. . . .

In answer to constant inquiries I have compiled some essentials for work in helping the cause of good legislation, similar to the work done by our department here.

1. The first essential is a selected library convenient to the legislative halls. This library should consist of well chosen and selected material. A large library is apt to fail because of its too general nature and because it is liable to become cumbersome. This library should be a depository for documents of all descriptions relating to any phase of legislation. . . . Books are generally behind the times, and newspaper clippings from all over the country and magazine articles, court briefs and letters must supplement this library and compose to a large extent its material.

2. A trained librarian and indexer is absolutely essential. The material is largely scrappy and hard to classify. We need

a person with a liberal education, who is original, not stiff, who can meet an emergency of all cases and who is tactful as well.

3. The material is arranged so that it is compact and accessible. Do not be afraid to tear up books, documents, pamphlets, clippings, letters, manuscripts or other material. Minutely index this material. Put it under the subjects. Legislators have no time to read large books. We have no time to hunt up many references in different parts of a library. They should be together as far as possible upon every subject of legislative importance.

4. Complete index of all bills which have not become laws in the past should be kept. This saves the drawing of new bills and makes the experience of the past cumulative.

5. Records of vetoes, special messages, political platforms, political literature, and other handy matter should be carefully noted and arranged. Our legislator often wants to get a bill through and we must remember that he often relies as much upon political or unscientific arguments as we do upon scientific work. He should be able to get hold of his political arguments if he wants to, and the political literature from all parties upon all questions should be kept near at hand.

6. Digests of laws on every subject before the legislature should be made and many copies kept. Leading cases on all these laws and opinions of public men and experts upon the working of these laws or upon the defects, technical or otherwise, should be carefully indexed and as far as possible published in pamphlet form, with short bibliographies of the subjects most before the people.

7. The department must be entirely non-political and non-partisan or else it will be worse than useless. . . .

8. The head of the department should be trained in economics, political science, and social science in general, and should have also a good knowledge of constitutional law. He should, above all, have tact and knowledge of human nature.

9. There should be a trained draftsman connected with the department—a man who is a good lawyer and something more than a lawyer, a man who has studied legislative forms, who can draw a bill, revise a statute, and amend a bill when called upon to do so. Such a man working right with this department and the critical data which it contains will be absolutely essential.

10. Methods.—(a) Go right to the legislator, make yourself acquainted with him, study him, find anything he wants for

him, never mind how trivial, accommodate him in every way. Advertise your department. Let everyone know where it is and what it does. Go to committees and tell them what you can do for them. (b) It is absolutely essential that you get information ahead of time or else you will be of no use in the rush. Send a circular letter out to your legislators and tell them you will get any material which will help them. . . . The replies to such a circular give you an idea of what is coming. Work for all you are worth on those topics, send out thousands of circular letters to experts on these topics, subscribe to clipping bureaus if necessary to secure critical data from the public at large. Gather statistics ahead. Carefully search books for significant and concise statements; if to the point copy out or tear them out and index them. Go through the court reports and get the best opinions. (c) Get hold of libraries or individuals or professors in other states with whom you can correspond. Speed in getting things to a committee or an individual is absolutely necessary. Do not fail to use the telegraph. . . . (d) Employ if you can during the session a good statistician. He can be of great service in dealing with financial bills, in estimating accidents from machinery, or in gathering statistical data of any kind. . . . (e) Make arrangements with all libraries in your city and libraries elsewhere for the loan of books or other material. . . . (f) A correspondent clerk and some helper to paste clippings, mount letters, etc., are necessary, especially during the legislative session. (g) Keep your place open from early in the morning till late at night. Do everything in your power to accommodate those for whom you work. . . .

47. The Wisconsin Anti-Lobbying Law

The practice of lobbying is probably as old as legislative assemblies themselves, but it seems not to have become important enough to be a serious menace to legislative honesty until after the Civil War. The first attempts to curb the illegitimate forms of influencing legislators were invariably ineffective and sometimes absurd. The Georgia constitution of 1877 naively enacted that "lobbying is declared to be a crime," but neglected to stipulate exactly what act should constitute the offense. As the rewards of securing favorable legislation increased, the evils of cor-

rupt and unscrupulous legislative agents multiplied until popular demand forced many state legislatures to place stringent restrictions on their activities. The following provisions from the Wisconsin statutes are illustrative of the stricter laws of this nature. Part of these provisions were passed as early as 1858, but the more important ones were placed on the statute books in 1899 and 1905.

Two sections (4482f and 4482j) have been omitted from the portion reprinted here. These sections provide penalties for the various illegal acts described in the remainder of the law. Inasmuch as the provisions of the statute were not passed at one time, penalties are not consistently proportioned to offenses, but vary from the disbarment of the offender from the privilege of acting as legislative agent for a period of three years to a fine of \$5,000 or six months' imprisonment.

SOURCE—*Wisconsin Statutes, 1923* (Madison, 1923), I, chap. 346, pp. 2238-2240.

SECTION 4482. Any person who shall, directly or indirectly, give or agree or offer to give any money or property or valuable thing or any security therefor to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of such measure, or who shall receive, directly or indirectly, or agree to receive any such money, property, thing of value or security therefor for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, shall attempt in any manner to influence any member of such legislature for or against such measure, without first making known to such member the real and true interest he has in such measure, either personally or as such agent or attorney, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars.

SECTION 4482a. Every person, corporation or association which employs any person to act as counsel or agent to promote or op-

pose in any manner, the passage by the legislature of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the state, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed or agreed to be employed, to be entered upon a legislative docket as hereinafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employe.

SECTION 4482*b*. The secretary of state shall prepare and keep two legislative dockets in conformity with the provisions of sections 4482*a* to 4482*g*, inclusive, one of which shall be known as the docket of the legislative counsel before committees, and the other as the docket of legislative agents. . . . In such dockets shall be entered the names and business address of the employer, the name, residence and occupation of the person employed, the date of the employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the special subject or subjects of legislation, if any, to which the employment relates. Such dockets shall be public records and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the secretary of state.

SECTION 4482*c*. . . . No person shall be employed as a legislative counsel or agent for a compensation dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the legislature, or of either branch thereof, or of any committee thereof. No person whose name is entered on the docket of the legislative counsel shall render any service as legislative counsel or agent otherwise than by appearing before a committee, . . . or by giving legal advice in the case of regular legal counsel of corporations or associations, unless his name is also entered on the docket of legislative agents.

SECTION 4482*d*. Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the secretary of state within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them.

SECTION 4482*e*. Within thirty days after the final adjournment of the legislature every person, corporation or association, whose name appears upon the legislative dockets of the session, shall file with the secretary of state a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with the employment of legislative counsel or agents, or in connection with promoting or opposing in any manner, the passage by the legislature of any legislation coming within the terms of section 4482*a*. Corporations and individuals within the provisions of sections 4482*a* to 4482*g*, inclusive, shall render such accounts in such form as shall be prescribed by the secretary of state, and such reports shall be open to public inspection. . . .

SECTION 4482*g*. Sections 4482*a* to 4482*f*, inclusive, shall not apply to any municipality or other public corporation.

SECTION 4482*h*. It shall be unlawful for any person employed for a pecuniary consideration, to act as legislative counsel or legislative agent, as defined by sections 4482*a* to 4482*g*, inclusive, to attempt personally and directly to influence any member of the legislature to vote for or against any measure pending therein, otherwise than by appearing before the regular committees thereof, when in session, or by newspaper publications, or by public addresses, or by written or printed statements, arguments, or briefs, delivered to each member of the legislature; provided, that before delivering such statement, argument, or brief, twenty-five copies thereof shall be first deposited with the secretary of state. No officer, agent, appointee, or employe, in the service of the state of Wisconsin, or of the United States, shall attempt to influence any member of the legislature to vote for or against any measure pending therein, affecting the pecuniary interests of such person, excepting in the manner authorized herein in the case of legislative counsel and legislative agents.

SECTION 4482*i*. It shall be unlawful for any person employed for a pecuniary consideration, to act as legislative counsel or legislative agent, as defined by section 4482*a* to 4482*g*, inclusive, to go upon the floor of either house of the legislature, reserved for the members thereof, while in session, except upon the invitation of such house.

48. A Call for a Special Session of a Legislature

Nearly all of the state constitutions make some provision for "special," "extra," "extraordinary," or "called" sessions of the legislature. These are usually convoked upon a call issued by the governor, who is presumed to be in the best position to know when such a session is needed. The power to call these special sessions is a very important one, and when a call is issued public attention is immediately challenged. Some of the states have gone so far as to give the governor the additional power to determine what matters may be considered at special sessions. Thus Colorado specifies that "at such special session no business shall be transacted other than that specially named in the proclamation." If the governor is not favorably disposed toward certain measures, all he need do to prevent their consideration at the extra session is to omit mention of them in the call which he issues.

The unusual conditions which arose as the result of the war led to a number of special sessions. The following proclamation by the governor of Colorado convened one of these, and illustrates the general form and character of these documents.

SOURCE—*Laws Passed at the Extraordinary Session of the Twenty-first General Assembly of the State of Colorado, 1917 (Denver, 1917), 1-2.*

PROCLAMATION

CALL FOR EXTRA SESSION

Whereas, It is provided in Section 9 of Article IV of the State Constitution that "The Governor may on extraordinary occasions convene the General Assembly by proclamation, stating therein the purpose for which it is to assemble"; and

Whereas, The United States is now at war with the Empire of Germany, and has called the entire National Guard of the State of Colorado to its aid, and requires the aid and assistance of this state in other ways, whereby in the opinion of the Governor an extraordinary occasion such as is contemplated by the Constitution has arisen;

Now, Therefore, I, Julius C. Gunter, Governor of the State of Colorado, do by this proclamation convene the Twenty-first General Assembly of this state and hereby summon the members thereof to meet in special session at the Capitol, in the City of Denver, on Wednesday, the 18th day of July, 1917, at 12 o'clock noon.

The purposes for which the General Assembly is convened are as follows:

1st. To provide, either by the issuance of bonds or by taxes, or both, for paying the expenses which have been, or may be, incurred for the raising, maintenance, equipment and preparation of the National Guard of the state for federal service; and to provide for paying all other expenses arising out of the matters and things hereinafter specifically referred to; and to make appropriations therefor.

2nd. To provide a guard or force to maintain order in the state.

3rd. To provide for the conservation and distribution of the food supply, and the increase of production.

4th. To permit state banking institutions to enter the Federal Reserve System.

5th. To provide funds for such other needs and uses of the state as have arisen or may arise out of the war.

6th. To provide for the payment of warrants already issued on account of the National Guard of the state in the year 1916.

7th. To provide for the support and maintenance of the State Soldiers' and Sailors' Home at Monte Vista.

8th. To provide for the expenses of the special session hereby called.

In Witness Whereof, I have hereunto set my hand and
(Seal) caused the great seal of the state to be affixed hereto
at Denver, Colorado, this 6th day of July, 1917.

JULIUS C. GUNTER,
Governor.

Attest:

JAMES R. NOLAND,
Secretary of State.

49. The Illinois Administrative Code

Before the enactment of the Civil Administrative Code, the organization of the executive departments in Illinois was similar to that which still prevails in a large number of the states. In addition to the seven elective executive officers, provided for by the constitution of 1870,¹ there were more than one hundred independent executive officers and boards. This situation was the result of a gradual statutory development. The economic and social conditions of the state had greatly changed since its constitution was adopted; and to meet these changes there was perpetual pressure on the legislature to create new offices.

The newer offices and boards were often established with little regard to those which already existed. They were nearly always independent of each other, and were only nominally under the supervision of the governor. Inevitably, such an irresponsible form of executive resulted in overlapping, extravagance, and inefficiency. By 1908 the situation became well-nigh intolerable, and thereafter the demand for reform steadily grew.

In 1913 the General Assembly created an "Efficiency and Economy Committee" which made an exhaustive investigation of the situation and, two years later, submitted an exceedingly valuable report of its findings. The 1915 session of the legislature failed to act upon the Committee's recommendation that the executive boards be consolidated into ten departments, but in the following year Governor Lowden made his campaign for nomination and election on the issue of administrative reorganization. The outcome was that the report of the Committee became the basis of the Civil Administrative Code enacted March 7, 1917. Three years later the Illinois Legislative Reference Bureau declared that this act "is probably the most important and effective measure relating to governmental reor-

¹ Governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, and attorney general.

ganization that has been enacted in any state.”¹ The following extracts illustrate the general principles upon which the act was drawn.

SOURCES—H. B. Hurd, *Revised Statutes of the State of Illinois, 1923* (Chicago, 1923), chap. 127, pp. 1997-2012; J. C. Cahill, *Revised Statutes of the State of Illinois, 1923* (Chicago, 1923), chap. 24a, pp. 770-793; *Civil Administrative Code of the State of Illinois, with Amendments* (Springfield, 1923), 5-38; *Laws of the State of Illinois enacted at the Fiftieth General Assembly, 1917* (Springfield, 1917), 4-36.

AN ACT in relation to the civil administration of the State government, and to repeal certain Acts therein named.

GENERAL PROVISIONS.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* This Act shall be known as “The Civil Administrative Code of Illinois.”

§ 2. The word “department,” as used in this Act shall, unless the context otherwise clearly indicates, mean the several departments of the State government as designated in section 3 of this Act, and none other.

§ 3. Departments of the State government are created as follows:

- The department of finance;
- The department of agriculture;
- The department of labor;
- The department of mines and minerals;
- The department of public works and buildings;
- The department of public welfare;
- The department of public health;
- The department of trade and commerce;
- The department of registration and education.

§ 4. Each department shall have an officer at its head who shall be known as a director, and who shall, subject to the provisions of this Act, execute the powers and discharge the duties vested by law in his respective department.

The following offices are hereby created:

- Director of finance, for the department of finance;
- Director of agriculture, for the department of agriculture;
- Director of labor, for the department of labor;

¹ *Constitutional Convention Bulletins* (Springfield, 1921), No. 9, “The Executive Department,” p. 626.

Director of mines and minerals, for the department of mines and minerals;

Director of public works and buildings, for the department of public works and buildings;

Director of public welfare, for the department of public welfare;

Director of public health, for the department of public health;

Director of trade and commerce, for the department of trade and commerce;

Director of registration and education, for the department of registration and education.

§ 5. In addition to the directors of departments, the following executive and administrative officers, boards and commissions, which said officers, boards and commissions in the respective departments, shall hold offices hereby created and designated as follows:

IN THE DEPARTMENT OF FINANCE.

Assistant director of finance;

Administrative auditor;

Superintendent of budget;

Superintendent of department reports;

Statistician;

The tax commission, which shall consist of five officers designated as tax commissioners.

IN THE DEPARTMENT OF AGRICULTURE.

Assistant director of agriculture;

General manager of State fair;

Superintendent of foods and dairies;

Superintendent of animal industry;

Superintendent of plant industry;

Chief veterinarian;

Chief game and fish warden;

The food standard commission, which shall consist of the superintendent of foods and dairies and two officers designated as food standard officers.

IN THE DEPARTMENT OF LABOR.

Assistant director of labor;

Chief factory inspector;

Superintendent of free employment offices;
Chief inspector of private employment agencies;
The industrial commission, which shall consist of five officers designated as industrial officers.

IN THE DEPARTMENT OF MINES AND MINERALS.

Assistant director mines and minerals;
The mining board, which shall consist of four officers designated as mine officers and the director of the department of mines and minerals;
The miners' examining board, which shall consist of four officers, designated miners' examining officers.

IN THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS.

Assistant director of public works and buildings;
Superintendent of highways;
Supervising architect;
Supervising engineer;
Superintendent of waterways;
Superintendent of printing;
Superintendent of purchases and supplies;
Superintendent of parks.

IN THE DEPARTMENT OF PUBLIC WELFARE.

Assistant director of public welfare;
Alienist;
Criminologist;
Fiscal supervisor;
Superintendent of charities;
Superintendent of prisons;
Superintendent of pardons and paroles.

IN THE DEPARTMENT OF PUBLIC HEALTH.

Assistant director of public health;
Superintendent of lodging house inspection.

IN THE DEPARTMENT OF TRADE AND COMMERCE.

Assistant director of trade and commerce;
Superintendent of insurance;

Fire marshal;

Superintendent of standards;

Chief grain inspector;

The Illinois Commerce Commission, which shall consist of seven officers, designated commerce commissioners;

Secretary of the Illinois Commerce Commission.

IN THE DEPARTMENT OF REGISTRATION AND EDUCATION.

Assistant director of registration and education;

Superintendent of registration;

The normal school board, which shall consist of nine officers, together with the director of the department and the Superintendent of Public Instruction. The above named officers, and each of them, shall, except as otherwise provided in this Act, be under the direction, supervision and control of the director of their respective departments, and shall perform such duties as such director shall prescribe.

§ 6. Advisory and non-executive boards, in the respective departments, are created as follows:

IN THE DEPARTMENT OF AGRICULTURE.

A Board of Agricultural Advisors, composed of fifteen persons, and a Board of State Fair Advisors, consisting of nine persons, not more than three of whom shall be appointed from any one county.

IN THE DEPARTMENT OF LABOR.

A Board of Illinois Free Employment Office Advisors, composed of five persons;

A Board of local Illinois Free Employment Office Advisors, for each free employment office, composed of five persons on each local board.

IN THE DEPARTMENT OF PUBLIC WORKS.

A Board of Art Advisors, composed of eight persons;

A Board of Water Resource Advisors, composed of five persons;

A Board of Highway Advisors, composed of five persons;

A Board of Parks and Buildings Advisors, composed of five persons.

IN THE DEPARTMENT OF PUBLIC WELFARE.

A Board of Public Welfare Commissioners, composed of five persons.

IN THE DEPARTMENT OF PUBLIC HEALTH.

A Board of Public Health Advisors, composed of five persons.

IN THE DEPARTMENT OF REGISTRATION AND EDUCATION.

A Board of Natural Resources and Conservation Advisors, composed of eight persons;

A Board of State Museum Advisors, composed of five persons.

The Immigrants Commission, composed of five members, one of whom shall be the Director of the Department of Registration and Education. The members of each of the above named boards shall be officers.

§ 7. One food standard officer shall be a representative of the Illinois food manufacturing industries and the other shall be an expert food chemist of known reputation.

The fifteen agricultural advisors shall be persons engaged in agricultural industries, not excluding representatives of the agricultural press and of the State Agricultural Experiment Station.

Of the five industrial officers, two shall be representative citizens of the employing class operating under the Workmen's Compensation Act, two shall be representative citizens chosen from among the employees operating under such Act, and the other shall be a representative citizen not identified with either the employing or employee classes.

Of the five Illinois Free Employment Office Advisors, two shall be representative employers, two representatives of organized labor, and one representative citizen who is neither an employer nor an employee.

The five local Illinois Free Employment Office Advisors shall have the same qualifications as the Illinois free employment office advisors.

The Director of Mines and Minerals shall be a person thoroughly conversant with the theory and practice of coal mining but who is not identified with either coal operators or coal miners. Of the four mine officers, two shall be coal operators and two shall be practical coal miners.

Each of the three miners' examining officers shall have at

least five years' practical and continuous experience as a coal miner and have been actually engaged as a coal miner in this State continuously for twelve months next preceding his appointment, and no one of whom shall hold any lucrative public office, Federal, State, or municipal.

Of the eight art commissioners, two shall be painters, two sculptors, two architects, and two neither painters, sculptors nor architects.

The Director of Public Health shall be a person licensed to practice medicine and surgery in this State and shall have had at least five years' practical experience in the practice of medicine and surgery in this State and at least six years' practical experience in public health work.

The Assistant Director of Public Health shall be a person licensed to practice medicine and surgery in this State and shall have had at least five years' practical experience in the practice of medicine and surgery in this State and at least three years' practical experience in public health work.

No public utility commissioner or employee of the public utility commission shall be in the employ of or hold any official relation to any corporation or person subject in whole or in part to regulation by the commission nor shall he hold stocks or bonds in any such corporation or be in any other manner pecuniarily interested therein, directly or indirectly, and if any public utility commissioner or employee shall voluntarily become so interested, his office or employment shall *ipso facto* become vacant, and if any public utility commissioner or employee becomes so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest.

The Chief Grain Inspector shall be a person who is not interested, either directly or indirectly, in any warehouse in this State, and who is not a member of the board of trade.

Neither the Director, Assistant Director, Superintendent of Registration, nor any other executive and administrative officer in the Department of Registration and Education shall be affiliated with any college or school of medicine, pharmacy, dentistry, nursing, optometry, embalming, barbering, veterinary medicine and surgery, architecture, or structural engineering, either as teacher, officer or stockholder, nor shall he hold a license or certificate to exercise or practice any of the professions, trades or occupations regulated.

No more than two members of the normal school board shall be residents of any one congressional district.

The board of Natural Resources and Conservation shall be composed of the Director of Registration and Education, who shall be *ex-officio* chairman thereof, the president of the University of Illinois or his representative, and one expert each in biology, geology, engineering, chemistry and forestry, qualified by ten years' experience in practicing or teaching their several professions and one physician.

The Board of State Museum Advisors shall be composed of one expert in botany, ethnology, zoology, manufacture and museum administration.

§ 8. Each advisory and non-executive board, except as otherwise expressly provided in this Act, shall with respect to its field of work, or that of the department with which it is associated, have the following powers and duties;

1. To consider and study the entire field; to advise the executive officers of the department upon their request; to recommend, on its own initiative, policies and practices, which recommendations the executive officers of the department shall duly consider, and to give advice or make recommendation to the Governor and the General Assembly when so requested, or on its own initiative;

2. To investigate the conduct of the work of the department with which it may be associated, and for this purpose to have access, at any time, to all books, papers, documents, and records pertaining or belonging thereto, and to require written or oral information from any officer or employee thereof;

3. To adopt rules, not inconsistent with law, for its internal control and management, a copy of which rules shall be filed with the director of the department with which such board is associated;

4. To hold meetings at such times and places as may be prescribed by the rules, not less frequently, however, than quarterly;

5. To act by a sub-committee, or by a majority of the board, if the rules so prescribe;

6. To keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the director of the department;

7. To give notice to the Governor and to the director of the department with which it is associated of the time and place of every meeting, regular or special, and to permit the Governor and

the director of the department to be present and to be heard upon any matter coming before such board. . . .

§ 10. No member of an advisory and non-executive board shall receive any compensation.

§ 11. Each executive and administrative officer, except the two food standard officers, the members of the mining board, and the members of the normal school board shall devote his entire time to the duties of his office and shall hold no other office or position of profit.

§ 12. Each officer whose office is created by this Act shall be appointed by the Governor, by and with the advice and consent of the Senate. In any case of vacancy in such offices during the recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the Senate, shall hold his office during the remainder of the term and until his successor shall be appointed and qualified. If the Senate is not in session at the time this Act takes effect, the Governor shall make a temporary appointment as in case of a vacancy.

§ 13. Each officer whose office is created by this Act, except as otherwise specifically provided for in this Act, shall hold office for a term of four years from the second Monday in January next after the election of a Governor, and until his successor is appointed and qualified. . . .

§ 15. Each executive and administrative officer whose office is created by this Act shall, before entering upon the discharge of the duties of his office, give bond, with security to be approved by the Governor, in such penal sum as shall be fixed by the Governor, not less in any case than ten thousand dollars, conditioned for the faithful performance of his duties, which bond shall be filed in the office of the Secretary of State.

§ 16. The director of each department is empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto.

§ 17. Each department shall maintain a central office in the Capitol building at Springfield, in rooms provided by the Secretary of State. The director of each department may, in his

discretion and with the approval of the Governor, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department.

§ 18. Each department shall be open for the transaction of public business at least from eight-thirty o'clock in the morning until five o'clock in the evening of each day except Sundays and days declared by the negotiable instrument Act to be holidays.

§ 19. Each department shall adopt and keep an official seal.

§ 20. Each department is empowered to employ subject to civil service laws in force at the time the employment is made, necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation.

§ 21. All employees in the several departments shall render not less than seven and one-half hours of labor each day, Saturday afternoon, Sundays and days declared by the negotiable instrument Act to be holidays excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.

§ 22. Each employee in the several departments shall be entitled during each calendar year to fourteen days' leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended.

§ 23. No employee in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law.

§ 24. Nothing in this Act shall be construed to amend, modify, or repeal the State civil service law. . . . This section shall not be construed to require the retention of more employees than are necessary to the proper performance of the functions of the departments.

§ 25. Each director of a department shall annually on or before the first day of December, and at such other times as the Governor may require, report in writing to the Governor concerning the condition, management and financial transactions of their respective departments. In addition to such reports, each director of a department shall make the semi-annual and biennial reports provided by the Constitution. The department shall make annual and biennial reports at the time prescribed in this section, and at no other time.

§ 26. The directors of departments shall devise a practical and working basis for co-operation and co-ordination of work, eliminating duplication and overlapping of functions. They shall, so far as practicable, co-operate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employee of another department, subject to the consent of the superior officer of the employee, to perform any duty which he might require of his own subordinates. . . .

§ 28. In the construction of buildings for the various departments, or in doing other construction work in or about buildings and grounds, exceeding the estimated value of one thousand dollars, contracts therefor shall be let to the lowest responsible bidder. Supplies for the several departments, except in cases of emergency and in the case of perishable goods, shall be purchased in large quantities and contracts therefor shall be let to the lowest responsible bidder. Advertisements for bids for doing such construction work, or furnishing such supplies, shall be published for at least three days, the first and last of which publications shall be at least ten days apart, in one or more newspapers of general circulation published in each of the seven largest cities of the State determined by the then last preceding Federal census, and, also, in one secular English newspaper selected by the Department of Public Works and Buildings by competitive bidding in the same manner as it is herein provided other contracts may be let and designated as an "official newspaper," which newspaper so selected shall continue to be the official newspaper for a period of one year from the time of its selection. The proposals shall be publicly opened on the day and hour and at the place mentioned in the advertisement and any and all bids may be rejected and when rejected a re-advertisement shall be made in the manner above provided. . . .

§ 31. Whenever in this Act power is vested in a department to inspect, examine, secure data or information, or to procure assistance from another department, a duty is hereby imposed upon the department upon which demand is made, to make such power effective.

§ 32. Whenever rights, powers and duties, which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this Act, transferred, either in

whole or in part, to or vested in any department created by this Act, such rights, powers and duties shall be vested in, and shall be exercised by, the department to which the same are hereby transferred, and not otherwise, and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy inspector or subordinate officer thereof. Every person and corporation shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer, board, commission, department or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this Act. Every person and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer, board, commission, or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this Act. Every officer and employee shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employee whose powers or duties devolved upon him under this Act. All books, records, papers, documents, property, real and personal, unexpended appropriations, and pending business in any way pertaining to the rights, powers and duties so transferred to or vested in a department created by this Act, shall be delivered and transferred to the department succeeding to such rights, powers and duties.

§ 33. Wherever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any officer, board, commission, or institution, or deputy, inspector or subordinate thereof, abolished by this Act, the same shall be made, given, furnished, or served in the same manner to or upon the department upon which are devolved by this Act the rights, powers and duties now exercised or discharged by such officer, board, commission, or institution, or deputy, inspector or subordinate thereof; and every penalty for failure so to do shall continue in effect.

§ 34. This Act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this Act takes effect; but such actions or proceedings may be prosecuted and continued by the department having jurisdiction, under this Act, of the subject matter to which such litigation or proceeding pertains. . . .

THE DEPARTMENT OF FINANCE.

§ 36. The department of finance shall have power:

1. To prescribe and require the installation of a uniform system of bookkeeping, accounting and reporting for the several departments;

2. To prescribe forms for accounts and financial reports and statements for the several departments;

3. To supervise and examine the accounts and expenditures of the several departments;

4. To examine, at any and all times, into the accuracy and legality of the accounts, receipts and expenditures of the public moneys and the disposition and use of the public property by the several departments;

5. To keep such summary and controlling accounts as may be necessary to determine the accuracy of the detail accounts and reports from the several departments, and to prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations;

6. To prescribe uniform rules governing specifications for purchases of supplies, the advertisement for proposals, the opening of bids and the making of awards, to keep a catalogue of prices current and to analyze and tabulate prices paid and quantities purchased;

7. To examine, at any and all times, the accounts of every private corporation, institution, association or board receiving appropriations from the General Assembly;

8. To report to the Attorney General for such action, civil or criminal, as the Attorney General may deem necessary, all facts showing illegal expenditures of the public money or misappropriation of the public property;

9. To examine and approve, or disapprove, vouchers, bills and claims of the several departments, and such as are by law made subject to the approval of the Governor and referred to it by

the Governor, and no voucher, bill or claim of any department shall be allowed without its approval and certificate;

10. To prescribe the form of receipt, voucher, bill or claim to be filed by the several departments with it;

11. In settling the accounts of the several departments, to inquire into and make an inspection of articles and materials furnished or work and labor performed, for the purpose of ascertaining that the prices, quality and amount of such articles or labor are fair, just and reasonable, and that all the requirements, express and implied, pertaining thereto have been complied with, and to reject and disallow any excess;

12. To prepare and report to the Governor, when requested, estimates of the income and revenues of the State;

13. To prepare and submit to the Governor biennially, not later than the first day of January preceding the convening of the General Assembly, a State budget;

14. To publish, from time to time, for the information of the several departments and of the general public, bulletins of the work of the government;

15. To investigate duplication of work of departments and the efficiency of the organization and administration of departments, and to formulate plans for the better co-ordination of departments.

§ 37. In the preparation of a State budget, the director of finance shall not later than the fifteenth day of September in the year preceding the convening of the General Assembly, distribute to all departments and to all officers and institutions of the State government (including the elective officers in the executive department and including the University of Illinois and the judicial department) the proper blanks necessary to the preparation of budget estimates, which blanks shall be in such form as shall be prescribed by the director of finance, to procure, among other things, information as to the revenues and expenditures for the two preceding fiscal years, the appropriations made by the previous General Assembly, the expenditures therefrom, encumbrances thereon, and the amounts unencumbered and unexpended, an estimate of the revenues and expenditures of the current fiscal year, and an estimate of the revenues and amounts needed for the respective departments and offices for the two years next succeeding beginning at the expiration of the first fiscal quarter after the adjournment of the General Assembly. Each depart-

ment, office and institution (including the elective officers in the executive and judicial departments and including the University of Illinois) shall, not later than the first day of November, file in the office of the director of finance its estimates of receipts and expenditures for the succeeding biennium. Such estimates shall be accompanied by a statement in writing giving facts and explanation of reasons for each item of expenditure requested. The director of finance may, in his discretion, make further inquiries and investigations as to any item dersired [desired]. He may approve, disapprove or alter the estimates. He shall, on or before the first day of January preceding the convening of the General Assembly, submit to the Governor in writing his estimates of revenues and appropriations for the next succeeding biennium.

§ 38. The Governor shall as soon as possible and not later than four weeks after the organization of the General Assembly submit a State budget, embracing therein the amounts recommended by him to be appropriated to the respective departments, offices, and institutions, and for all other public purposes, the estimated revenues from taxation, the estimated revenues from sources other than taxation, and an estimate of the amount required to be raised by taxation. Together with such budget, the Governor shall transmit the estimates of receipts and expenditures, as received by the director of finance, of the elective officers in the executive and judicial departments and of the University of Illinois.

§ 39. Each department shall, before an appropriation to such department becomes available for expenditure, prepare and submit to the department of finance an estimate of the amount required for each activity to be carried on, and accounts shall be kept and reports rendered showing the expenditures for each such purpose. . . .

THE DEPARTMENT OF PUBLIC HEALTH.

§ 55. The department of public health shall have power:

1. To exercise the rights, powers and duties vested by law in the State Board of Health, its secretary and executive officer, other officers and employees, except the rights, powers and duties vested by law in the State Board of Health under the Act to regulate the practice of medicine and the Act to regulate the practice of embalming;

2. To have the general supervision of the interests of the health and lives of the people of the State;

3. To act in advisory capacity relative to public water supplies, water purification works, sewerage system, and sewage treatment works, and to exercise supervision over nuisances growing out of the operation of such water and sewage works, and to make, promulgate and enforce rules and regulations relating to such nuisances;

4. To make such sanitary investigations as it may, from time to time, deem necessary for the preservation and improvement of public health;

5. To make examinations into nuisances and questions affecting the security of life and health in any locality in the State;

6. To maintain chemical, bacteriological and biological laboratories, to make examinations of milk, water, sewage, wastes, and other substances, and to make such diagnosis of diseases as may be deemed necessary for the protection of the people of the State;

7. To purchase and distribute free of charge to citizens of the State diphtheria antitoxin, typhoid vaccine, smallpox vaccine and other sera, vaccines and prophylactics such as are of recognized efficiency in the prevention and treatment of communicable diseases;

8. To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the promotion of health or to the security of life in this State;

9. To make investigations and inquiries with respect to the causes of disease, especially epidemics, and to investigate the causes of mortality and the effect of localities, and other conditions upon the public health, and to make such other sanitary investigations as it may deem necessary for the preservation and improvement of the public health;

10. To keep informed of the work of local health officers and agencies throughout the State;

11. To promote the information of the general public in all matters pertaining to public health;

12. To supervise, aid, direct and assist local health authorities or agencies in the administration of the health laws;

13. To enlist the co-operation of organizations of physicians and other agencies for the promotion of the public health in the improvement of health and sanitary conditions throughout the State;

14. To make sanitary, sewage, health and other inspections and examinations for the charitable, penal and reformatory institutions and the normal schools;

15. To inspect, from time to time, all hospitals, sanitarium, and other institutions conducted by county, city, village or township authorities, and to report as to the sanitary conditions and needs of such hospitals, sanitarium and institutions to the official authority having jurisdiction over them;

16. To print, publish and distribute documents, reports, bulletins, certificates and other matter relating to the prevention of diseases and the health and sanitary condition of the State. . . .

THE DEPARTMENT OF REGISTRATION AND EDUCATION.

§ 58. The department of registration and education shall have power: . . .

19. To investigate the entomology of the State;

20. To investigate all insects dangerous or injurious to agricultural or horticultural plants and crops, live stock, to nursery trees and plants, to the products of the truck farm and vegetable garden, to shade trees and other ornamental vegetation of cities and villages, to the products of the mills and the contents of warehouses, and all insects injurious or dangerous to the public health;

21. To conduct experiments with methods for the prevention, arrest, abatement and control of insects injurious to persons or property;

22. To instruct the people, by lecture, demonstration or bulletin, in the best methods of preserving and protecting their property and health against injuries by insects;

23. To publish, from time to time, articles on the injurious and beneficial insects of the State;

24. To study the geological formation of the State with reference to its resources of coal, ores, clays, building stones, cement, materials suitable for use in the construction of roads, gas, mineral and artesian water and other products;

25. To publish, from time to time, topographical, geological and other maps to illustrate the resources of the State;

26. To publish, from time to time, bulletins giving a general and detailed description of the geological and mineral resources of the State:

27. To cooperate with the United States geological survey in

the preparation and completion of a contour topographical survey and map;

28. To collect facts and data concerning the water resources of the State;

29. To determine standards of purity of drinking water for the various sections of the State;

30. To publish, from time to time, the results of its investigations of the waters of the State. . . .

50. The Maryland Budget

Maryland was the first state to adopt an executive budget system by constitutional amendment. On November 7, 1916, the voters approved by more than two to one, an amendment providing that the governor should submit to the legislature a complete budget each biennium. This document was to contain a full statement of the estimated revenues and proposed expenditures for each of the ensuing years. The following tables, taken from the budget presented by the governor in 1924, illustrate how this mandate is carried out. The first tables indicate the form in which the general summary of the estimated financial condition of the state is presented. This is followed by detailed tables showing what appropriations have been asked for by the departments concerned and those which the governor recommends for adoption.

Under the provision of the constitution, the General Assembly is at complete liberty to revise any appropriations for the legislative department, either by increasing or decreasing them. The requests for money for the judiciary may be only increased, however; and the recommendations of the governor for the executive branch may be only decreased. This provision gives the governor so much power in the initiation of proposals for expenditure that it was thought unnecessary to give him a veto over the bill as finally passed. Consequently, the act becomes law without the signature of the governor.

SOURCE—*Maryland State Budget for the Fiscal Years ending, 1925, 1926, 1927* (Baltimore, 1924), 23-25, 168-170.

GENERAL SUMMARY OF FINANCIAL REQUIREMENTS FOR THE FISCAL YEAR
ENDING SEPTEMBER 30, 1925

1. ESTIMATED REVENUES FOR 1925, INCLUDING FISCAL BALANCE SEPTEMBER
30, 1924

Sources of Revenue	Sources of Revenue		Totals
	General Funds	Special Funds	
From Taxes.....	\$2,348,500.00	\$5,023,461.00	\$7,371,961.00
“ Licenses.....	1,860,000.00	4,545,577.00	6,405,577.00
“ Franchise Taxes.....	175,000.00	75,000.00	250,000.00
“ Fees, Fines, etc.....	343,000.00	.....	343,000.00
“ Interest, etc.....	225,000.00	4,500.00	229,500.00
“ State Institutions.....	.....	433,054.00	433,054.00
“ Miscellaneous Sources.....	1,682,555.00	207,003.00	1,889,558.00
“ Balance estimated as of Sep- tember 30, 1924.....	1,223,000.00	1,050,000.00	2,273,000.00
	\$7,857,055.00	\$11,338,595.00	\$19,195,650.00

2. ESTIMATED EXPENDITURES

Purpose of Expenditure	General Funds	Special Funds	Totals
1.— <i>Governmental Appropriations:</i>			
Executive Departments.....	\$1,506,276.00	\$3,965,784.00	\$5,472,060.00
Public Schools.....	1,418,539.00	2,313,461.00	3,732,000.00
Public Debt.....	.....	2,775,000.00	2,775,000.00
Transferred to Sinking Funds.....	250,000.00	750,000.00	1,000,000.00
Judicial Department.....	283,984.00	.....	283,984.00
2.— <i>General Appropriations:</i>			
State Institutions.....	2,640,155.00	368,054.00	3,008,209.00
State-Aided Institutions.....	954,950.00	.....	954,950.00
Miscellaneous Appropriations	85,654.65	961,802.00	1,047,456.65
	\$7,139,558.65	\$11,134,101.00	\$18,273,659.65
Less Reversions.....			100,000.00
			\$18,173,659.65

Estimated Balance in Treasury September 30, 1925..... \$1,021,990.35

GENERAL SUMMARY OF FINANCIAL REQUIREMENTS FOR THE FISCAL YEAR
ENDING SEPTEMBER 30, 1926

1. ESTIMATED REVENUES FOR 1926, INCLUDING FISCAL BALANCE SEPTEMBER 30, 1925

Sources of Revenue	Sources of Revenue		Totals
	General Funds	Special Funds	
From Taxes.....	\$2,348,500.00	\$5,295,000.00	\$7,643,500.00
“ Licenses.....	1,865,000.00	5,000,084.00	6,865,084.00
“ Franchise Taxes.....	175,000.00	75,000.00	250,000.00
“ Fees, Fines, etc.....	343,000.00	.....	343,000.00
“ Interest, etc.....	225,000.00	4,500.00	229,500.00
“ State Institutions.....	.....	438,054.00	438,054.00
“ Miscellaneous Sources.....	1,685,680.00	207,003.00	1,892,683.00
“ Balance estimated as of September 30, 1925.....	1,021,990.35	.....	1,021,990.35
	\$7,664,170.35	\$11,019,641.00	\$18,683,811.35

2. ESTIMATED EXPENDITURES

Purpose of Expenditure	General Funds	Special Funds	Totals
1.—Governmental Appropriations:			
Executive Departments.....	\$1,503,276.00	\$4,325,874.00	\$5,829,150.00
Public Schools.....	1,339,500.00	2,432,500.00	3,772,000.00
Public Debt.....	.....	2,934,750.00	2,934,750.00
Judicial Department.....	284,384.00	.....	284,384.00
2.—General Appropriations:			
State Institutions.....	2,560,819.00	438,054.00	2,998,873.00
State-Aided Institutions....	951,550.00	.....	951,550.00
Miscellaneous Appropriations	38,350.00	1,056,219.00	1,094,569.00
	\$6,677,879.00	\$11,187,397.00	\$17,865,276.00
Less Reversions.....			100,000.00
			\$17,765,276.00

Estimated Balance in Treasury September 30, 1926..... **\$918,535.35**

GENERAL SUMMARY OF FINANCIAL REQUIREMENTS FOR THE FISCAL YEAR
ENDING SEPTEMBER 30, 19271. ESTIMATED REVENUES FOR 1927, INCLUDING FISCAL BALANCE SEPTEMBER
30, 1927

Sources of Revenue	Sources of Revenue		Totals
	General Funds	Special Funds	
From Taxes.....	\$2,348,500.00	\$5,566,538.00	\$7,915,038.00
“ Licenses.....	1,890,000.00	5,500,043.00	7,390,043.00
“ Franchise Taxes.....	175,000.00	75,000.00	250,000.00
“ Fees, Fines, etc.....	343,000.00	.....	343,000.00
“ Interest, etc.....	225,000.00	4,500.00	229,500.00
“ State Institutions.....	.....	438,054.00	438,054.00
“ Miscellaneous Sources.....	1,710,180.00	207,003.00	1,917,183.00
“ Balance estimated as of Sep- tember 30, 1926.....	918,535.35	.....	918,535.35
	\$7,610,215.35	\$11,791,138.00	\$19,401,353.35

2. ESTIMATED EXPENDITURES

Purpose of Expenditure	General Funds	Special Funds	Totals
1.— <i>Governmental Appropriations:</i>			
Legislative Department.....	\$ 218,214.00	.....	\$ 218,214.00
Executive Departments.....	1,458,406.00	\$ 4,726,621.00	6,255,027.00
Public Schools.....	1,471,808.00	2,380,192.00	3,782,000.00
Public Debt.....	.....	3,249,250.00	3,249,250.00
Judicial Department.....	290,184.00	.....	290,184.00
2.— <i>General Appropriations:</i>			
State Institutions.....	2,555,519.00	438,054.00	2,993,573.00
State-Aided Institutions....	951,550.00	.....	951,550.00
Miscellaneous Appropriations	39,350.00	1,155,431.00	1,194,781.00
	\$6,985,031.00	\$11,949,548.00	\$18,934,579.00

Estimated Balance in Treasury September 30, 1927..... \$566,774.35

MARYLAND HOUSE OF CORRECTION

LINE NO.	CLASSIFICATION OF EMPLOYMENT	AMOUNT APPROPRIATED		AMOUNT EXPENDED 1923	AMOUNT REQUESTED			GOVERNOR'S ALLOWANCE							
		1923	1924		1925	1926	1927	1925	1926	1927					
1	A-1-Warden.....	\$ 6,200.00	.....	\$ 2,170.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
2	A-2-Assistant Warden.....	2,000.00	\$2,400.00	2,266.74	.....	.....	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00	2,400.00
3	A-3-Principal Account Clerk.....	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00
4	A-4-Physician, Institutional.....	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
5	A-5-Chaplain.....	1,500.00	1,000.00	1,283.30	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
6	A-6-Chief Engineman.....	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
7	A-7-Shift Engineman.....	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00	1,518.00
8	A-8-Shift Engineman.....	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00	1,318.00
9	A-9-Guards, 20 at \$1,500.00 each	25,212.00	30,000.00	27,336.71	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
10	A-10-First Deputy.....	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
11	A-11-Mechanical Handy Man.....	1,584.00	1,500.00	1,584.00	1,584.00	1,584.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00
12	A-12-Mechanical Handy Man.....	1,518.00	1,500.00	1,518.00	1,518.00	1,518.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
13	A-13-Mechanical Handy Man.....	1,320.00	1,500.00	1,518.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
14	A-14-Cook.....	1,200.00	1,500.00	1,129.97	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
15	A-15-Baker.....	1,200.00	1,200.00	1,700.00	1,200.00	1,200.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00
16	A-16-Identification Expert.....	1,700.00	1,500.00	1,518.00	1,500.00	1,500.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
17	A-17-Farm Manager.....	1,518.00	1,500.00	1,518.00	1,500.00	1,500.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00
18	A-18-Gardener.....	1,320.00	1,320.00	1,110.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00	1,320.00
19	A-19-Storekeeper.....	1,500.00	1,800.00	1,695.02	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
20	A-20-Matron.....	1,000.00	1,000.00	1,005.20	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
21	A-21-Matron (Laundry).....	795.00	900.00	449.04	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00
22	A-22-Chaplain (Catholic).....	100.00	150.00	100.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00	150.00
23	A-23-Senior Clerk.....	1,500.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
24	A-24-Physician, Consulting.....	300.00	1,200.00	383.33	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
25	A-25-Junior Clerk.....	.....	900.00	720.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00	900.00
26	A-26-Welfare Worker.....	.....	1,200.00	343.33	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
27	A-27-Trained Nurse.....	.....	1,200.00	150.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
	Totals.....	\$ 63,421.00	\$ 66,406.00	\$ 61,328.64	\$ 66,906.00	\$ 66,906.00	\$ 66,906.00	\$ 66,906.00	\$ 66,906.00	\$ 66,906.00	\$ 66,406.00	\$ 66,406.00	\$ 66,406.00	\$ 66,406.00	\$ 66,406.00

MARYLAND HOUSE OF CORRECTION—(Continued)

LINE NO.	OBJECT OF EXPENDITURE	AMOUNT APPROPRIATED		AMOUNT EXPENDED 1923	AMOUNT REQUESTED			GOVERNOR'S ALLOWANCE		
		1923	1924		1925	1926	1927	1925	1926	1927
B-1	General Repairs.....	\$ 1,500.00	\$ 1,500.00	\$ 558.59	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
B-2	Motor Vehicle Repairs.....	.....	.....	.....	500.00	500.00	500.00	500.00	500.00	500.00
B-3	Traveling Expenses.....	1,500.00	1,500.00	1,326.32	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
B-4	Transportation.....	15,000.00	15,000.00	14,701.83	2,000.00	2,000.00	2,000.00	1,500.00	1,500.00	1,500.00
B-5	Communication.....	1,250.00	1,250.00	1,168.57	1,250.00	1,250.00	1,250.00	1,200.00	1,200.00	1,200.00
B-6	Food Supplies.....	32,500.00	32,500.00	32,500.00	40,000.00	40,000.00	40,000.00	32,500.00	32,500.00	32,500.00
C-1	Forage, Veterinary and Stable Supplies.....	.....	.....	.....	1,000.00	1,000.00	1,000.00	500.00	500.00	500.00
C-2	Fuel Supplies.....	25,000.00	25,000.00	18,371.00	38,000.00	38,000.00	38,000.00	37,000.00	37,000.00	37,000.00
C-3	Office Supplies and Stationery.....	304.00	304.00	271.52	304.00	304.00	304.00	304.00	304.00	304.00
C-4	Printing.....	500.00	500.00	369.60	500.00	500.00	500.00	400.00	400.00	400.00
C-5	Medical and Surgical Supplies.....	2,000.00	2,000.00	1,866.90	2,000.00	2,000.00	2,000.00	1,900.00	1,900.00	1,900.00
C-6	Household, Laundry and Cleaning Supplies.....	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00
C-7	Educational, Vocational and Recreational Supplies.....	6,500.00	6,500.00	6,500.00	6,500.00	6,500.00	6,500.00	6,500.00	6,500.00	6,500.00
C-8	Agricultural and Botanical Supplies.....	.....	.....	.....	750.00	750.00	750.00	300.00	300.00	300.00
C-9	Motor Vehicle Supplies.....	8,500.00	8,500.00	4,903.76	8,500.00	8,500.00	8,500.00	6,000.00	6,000.00	6,000.00
C-10	Wearing Apparel.....	12,000.00	12,000.00	9,537.11	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
C-11	Chlorine Plant Supplies.....	500.00	500.00	117.52	500.00	500.00	500.00	500.00	500.00	500.00
C-12	Power Plant Supplies.....	5,000.00	5,000.00	5,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
D-1	Materials for Repairs to Buildings and Equipment.....	9,750.00	9,750.00	7,746.28	11,750.00	11,750.00	11,750.00	11,750.00	11,750.00	11,750.00
D-2	Office Equipment.....	500.00	500.00	106.14	500.00	500.00	500.00	500.00	500.00	500.00
D-3	Household Equipment.....	.....	.....	.....	2,000.00	2,000.00	2,000.00	1,000.00	1,000.00	1,000.00
D-4	Medical and Surgical Equipment.....	.....	.....	.....	250.00	250.00	250.00	200.00	200.00	200.00
D-5	Laboratory Equipment.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
D-6	Live Stock.....	1,000.00	1,000.00	307.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
D-7	Motor Vehicles.....	.....	.....	.....	3,000.00	1,600.00	.....	.....	3,000.00	.....
D-8	Agricultural and Botanical Equipment.....	5,000.00	5,000.00	2,618.74	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
D-9	Steam Engine.....	33,000.00	33,000.00	33,000.00	10,000.00	.....	.....	.....	.....	.....
D-10	To Repay Loan.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Totals.....		\$161,554.00	\$128,554.00	\$141,221.24	\$149,054.00	\$137,654.00	\$136,054.00	\$122,119.00	\$125,119.00	\$122,119.00

STRUCTURES

MARYLAND HOUSE OF CORRECTION

LINE NO.	NATURE OF BUILDING	NEW OR REMODELED	LOCATION	KIND—FRAME, BRICK, ETC.	BASIS OF ESTIMATES, ARCHITECT'S ESTIMATE, PER CAPITA CAPACITY, ETC.	AMOUNT REQUESTED		
						1925	1926	1927
1	Women's Prison.....	New.....	Institution Grounds...	Brick.....	.....	.....	\$125,000.00	.....
	Totals.....	.....	.....	.....	.....	.....	\$125,000.00	.....

MARYLAND HOUSE OF CORRECTION—(Concluded)

LINE NO.		AMOUNT APPROPRIATED		AMOUNT EXPENDED 1923	AMOUNT REQUESTED			GOVERNOR'S ALLOWANCE		
		1923	1924		1925	1926	1927	1925	1926	1927
	SUMMARY									
1	Salaries, Wages and Special Pay-									
2	ments (Sheet No. 1).....	\$ 63,421.00	\$ 66,406.00	\$ 61,328.64	\$ 66,906.00	\$ 66,906.00	\$ 66,906.00	\$66,406.00	\$ 66,406.00	\$ 66,406.00
3	Operating Expenses (Sheet No. 2).....	161,554.00	128,564.00	141,221.24	149,054.00	137,654.00	136,054.00	122,119.00	125,119.00	122,119.00
	Structures (Sheet No. 3-A).....	.....	.....	.....	.....	125,000.00	.....	.....	.....	.....
	Totals	\$224,975.00	\$194,960.00	\$202,549.88	\$215,560.00	\$328,555.00	\$202,960.00	\$188,525.00	\$191,525.00	\$188,525.00

Applicable to this Budget are the following receipts for each year:

Contract Labor.....	\$115,000.00	1925	1926	1927
Farm Earnings.....	11,054.00	\$186,054.00	\$126,054.00	\$126,054.00
From Special Funds.....	.....	62,471.00	65,471.00	62,471.00
From General Funds.....	.....	.....	.....	.....
Total Appropriation.....	\$188,525.00	\$191,525.00	\$188,525.00	\$188,525.00

51. Report of a State Committee on Local Tax Assessments

State legislatures frequently provide for special committees or commissions to secure information needed for particularly difficult types or pieces of legislation. These bodies often conduct their investigations after the legislature has adjourned, but before it reconvenes for the next session. Hence they are called "interim committees." The matters referred to them are frequently of a highly technical nature, and usually the committee calls in or employs a number of experts to aid in the work. The following extracts from a report of the Special Joint Committee on Taxation, appointed by the New York legislature, illustrates the way in which the results of such investigations are presented.

The administration of the tax laws has always been a thorny problem for the political scientist. There is probably no place in our governmental system where inefficiency and inequality are more strongly entrenched than in this branch of administration. From the evidence reported by the New York Joint Committee (1923), it is evident that the machinery for tax assessment has all but broken down in New York State; and it is probable that similar conditions could be found in almost any other section of the country.

The tax law of New York provides that "all real and personal property subject to taxation shall be assessed at the full value thereof." Each assessor is required to take an oath that the assessments which have been made represent the full value of the property. The report of the Committee, however, shows that both the provisions of the statutes and the oaths of the assessors have become almost meaningless.

SOURCE—*Report of the Special Joint Committee on Taxation and Retrenchment, Feb. 1, 1923* (Albany, 1923), 103-122.

In one county every one of the towns is assessed at 21 per cent of full value or under. In another county five of the fourteen towns are assessed at 21 per cent or under. Excluding the towns

already referred to, eleven towns in six counties are assessed at less than 30 per cent of full value. In thirty-three counties, there are a total of 133 towns whose assessments are made at less than one-half of full value. Of the remaining twenty-four counties (exclusive of the five counties in Greater New York), there are only two in which all the towns are assessed at 61 per cent or over.

In view of these facts it is probably not amiss to repeat what has already been stated above—that the enactments of the Legislature and the oaths of assessors are lightly held throughout the greater part of the State.

But it is not only in the matter of full value assessments that the practice of many assessors is open to criticism.

Under authority conferred upon it by State law, the state tax department in 1916 issued a manual of instructions for assessors. Among other rules laid down for observance by assessors is this: "*Do not use field books and assessment rolls heretofore made by you or your predecessors in office.* * * * One of the greatest evils in the present method of making assessments is the copying of the former roll and the use of the old rolls and field books that have been handed down from generation to generation without material change." . . .

The extent to which this regulation, as well as the law requiring full value assessments, is ignored may be illustrated by the following examples:

In one town the following figures show the aggregate assessed values of real estate from 1917 down to date:

1917.....	\$393,565
1918.....	391,265
1919.....	392,035
1920.....	393,365
1921.....	393,354

In 1921 the State Tax Commission estimated the rate of assessed value to true value for this town to be 84 per cent on the basis of 1920 assessments. The ratio established by the Commission in 1922 on the basis of the 1921 assessment is 71 per cent. Evidently former tax rolls have more weight with the assessors than do the sales of real estate and other evidences of increasing values used by the State Tax Commission. . . .

In another county a case was found of a property sold in

1899 which was assessed to both vendor and vendee from 1899 to 1921. If the assessors had not been guilty of a slavish copying of the rolls from year to year, a duplicate assessment of this kind could hardly have remained undiscovered for twenty-one years.

In still another county a lot improved with a summer cottage renting for \$200 a season is carried on the rolls at a value of \$150 including improvements. . . .

In one matter, however, many of the assessors have varied from their plan of carefully copying the preceding year's roll. That is in the matter of the description of the taxable property. In some towns there has been a progressive deterioration of these descriptions which has reached a point where the courts have set aside in some instances the taxes levied because the descriptions are not "sufficient to identify the land intended to be assessed." In towns where there are no tax maps—and outside of Westchester county where tax maps are mandatory only a negligible number of towns have such maps—this is an extremely serious matter as the tax rolls comprise the only comprehensive source of information regarding the dimensions and location of taxable property. . . .

It must not be inferred, however, that the percentage of full value established by the State Tax Department for each town assessment as a whole represents a percentage applied by the assessor uniformly to every parcel on the roll. Far from it. Instances have been found in towns whose general ratio of assessed value to full value is less than 50 per cent where individual properties were assessed at well over 100 per cent of the prices at which they actually sold in a free market. Almost invariably, these glaring over-assessments occurred in the smaller properties.

For the purpose of ascertaining the extent to which this tendency prevails, 709 affidavits on actual sales prices were examined in one county and compared with the assessed values on the properties. Three hundred and one of the sales involved properties in a city where a well designed and well administered assessment system has been in operation for sometime. The remaining 408 sales were distributed in eight towns and one city, none of which had developed anything approaching a system. All the sales in both groups were classified into seven subgroups based on the amounts involved in the sales as indicated in the following table, and the percentages of assessed value to sales price were calculated for each subgroup. . . .

TABLE

Percentages of Assessed Values to Sales Prices

	For all sales	For sales from 0 to \$4,999	For sales from \$5,000 to \$9,999	For sales from \$10,000 to \$19,999	For sales from \$20,000 to \$29,999	For sales from \$30,000 to \$39,999	For sales from \$40,000 to \$49,999	For sales over \$50,000
301 sales in well assessed city.....	66.5	67.8	64.	60.	69.5	69.	68.	66.7
408 sales in 8 poorly assessed towns and one poorly assessed city	59.5	63.	61.5	59.	40.	57.	48.	29.5

.... The conclusion is inescapable that where no system of assessment is followed—and that condition exists in practically all the 932 towns in the State—there is a general tendency to assess small properties at a higher percentage of full value than larger properties. Probably the only exceptions to this general rule will be found in those towns which have sought the aid of the State Tax Commission in assessing manufacturing plants and other classes of property which are obviously impossible of accurate valuation by other than trained men. . . .

The following table shows the number of towns in the six counties studied, which report taxable personal property:

TABLE

Personal Property Assessments in Selected Counties

County	Number of towns	Number reporting taxable personal property	Number not reporting taxable personal property	Highest personal property aggregate reported by any town in county	Lowest personal property aggregate in county among towns reporting personal property
Albany.....	10	6	4	\$18,800	\$2,800
Erie.....	25	15	10	525,750	200
Franklin.....	19	16	3	60,250	400
Jefferson.....	22	20	2	74,950	500
Steuben.....	32	22	10	77,100	60
Sullivan.....	15	10	5	73,000	1,825
	123	89	34	(Maximum) \$525,750	(Minimum) \$60

One might infer that the towns in which no personal property is assessed for taxation comprise purely rural sections, but

such is not the case. In Albany county the town with the largest population and the highest aggregate of real property assessments is included in the list which reports no personal property. In Erie County, the towns which rank fourth and fifth within the county in assessed values of real estate report no personal property. Each of these towns has two villages in which one would reasonably expect to find stocks of merchandise, etc., in excess of the \$1,250 exemption [provided by law.]¹ . . .

TABLE

Personal Property Assessed under the General-Property Tax at Five-Year Intervals, 1840-1920

Year	Total real and personal (assessed value)	Personalty	Ratio of personalty to total
1840.....	\$ 639,171,000	\$121,447,800	18.93
1845.....	604,479,016	117,988,895	19.48
1850.....	724,874,293	153,183,486	21.05
1855.....	1,401,285,279	294,012,564	20.95
1860.....	1,440,550,836	320,617,352	22.24
1865.....	1,196,403,416	334,826,220	21.89
1870.....	2,052,537,898	452,607,732	22.05
1875.....	2,466,267,273	357,941,401	14.86
1880.....	2,681,257,606	340,921,916	12.70
1885.....	3,224,682,343	324,783,281	10.98
1890.....	3,779,393,746	382,159,067	10.12
1895.....	4,450,474,499	541,621,122	12.16
1900.....	5,765,741,474	672,715,703	11.66
1905.....	8,129,021,386	816,399,934	10.04
1910.....	10,121,501,061	482,499,193	4.77
1915.....	11,790,628,803	454,988,997	3.86
1920.....	14,850,989,607	255,263,116	1.72

Report of the Special Joint Committee on Taxation and Retrenchment [New York], March 1, 1922 (Albany, 1922), p. 45.

Enough evidence has been presented to indicate that there are no methods of assessing property for taxation in the great majority of towns. The intent of the law is that there shall be elected assessors in each town who "shall annually between January first and July first ascertain by diligent inquiry all the property and the names of all the persons taxable therein." . . . "The assessors shall complete the assessment roll on or before the first day of August." . . .

For their services in assessing property for taxation, town

¹ The decline in importance of the personal property tax is even more clearly shown in a table given in the 1922 report of the same Committee.—
EDITOR.

assessors are paid, except in a few towns affected by special legislation, on a per diem basis, the rate for each assessor being limited to from three to five dollars a day. . . . No provision, except in certain towns in Nassau and Erie counties, is made for the employment of clerks. The compensation paid to each town assessor for his services in the assessment of general property for taxation ranges from less than \$100 to about \$1,000 per year. Supervisors, in some cases, realizing that the per diems are paid only too often for relatively illegible and incomplete copies of preceding rolls, and for perfunctory viewing of property by assessors, have exercised pressure in order to reduce the number of per diems allowed to a minimum. In some cases they allow the employment of a clerk capable of making a clearer transcript of the old roll. Such an expenditure is at present illegal except in a few towns. In another case, a supervisor hired a Ford for the use of the assessors in making their rounds. By the expenditure of \$30 in this manner, he saved the town some \$80 in assessors' per diems. This expenditure was disallowed, so the supervisor stated, by the bureau of municipal accounts in the State Comptroller's office on the ground that it was not authorized by law; and the supervisor reimbursed the town funds to cover the expenditure from his own pocket.

The costs of assessing general property, even with these rigid statutory restrictions on per diems and other expenses, bulk rather large in the expenditures of town governments. . . .

TABLE

Unit Cost of Assessing in Towns and Cities

County	Costs in Towns		Costs in Cities	
	Per capita	Per \$1000 A.V.	Per capita	Per \$1000 A.V.
Albany.....	\$.26	\$.37	\$.17	\$.18
Erie.....	.36	.25	.22	.17
Jefferson.....	.20	.25	.37	.31
Steuben.....	.23	.36	.085	.14
Average.....	.263	.308	.221	.208

. . . . In spite of the better assessing done in the cities. . . . the per capita costs of assessing and the costs of assessing per \$1,000 of assessed values are higher in the towns. Furthermore,

the expenditures for assessments in the towns represent a greater percentage of total expenditures for local purposes than in the case of the cities. Small as the per diems and annual payments to town assessors are, and rigidly as expenses for clerical hire, etc., are held to a minimum the towns in the six counties studied are spending for assessments about 3.49 per cent of their total levies for town purposes. The cities lying in these counties on the other hand, are spending for assessments only .74 per cent of the total taxes levied for local purposes. . . .

There are three general plans for equalization of assessments between towns:

1.—Equalization by the board of supervisors under authority granted by Sec. 50 of the Tax Law. Under this plan the duty is generally delegated to a committee of the board, who prepare a report for submission to the board as a whole.

2.—Equalization by a board of three equalization commissioners appointed by the board of supervisors under authority of Sec. 51 of the Tax Law. Two of the commissioners shall be residents of the county, but not members of the board of supervisors; the third shall be neither a resident nor a taxpayer of the county, but must reside in the judicial district in which the county is located. All appointments shall be confirmed by a two-thirds vote of all the supervisors. . . .

3.—Equalization by a board of commissioners appointed by a majority vote of the justices of the supreme court residing in the county, under authority granted in each case by special act.

Among the counties specially studied, Albany, Franklin, Jefferson, Steuben and Sullivan operate under the first plan; and Erie under the third. . . . Unfortunately, no counties operating under the second plan were included among the counties visited. . . .

As an index to the relative value of equalizations in the counties studied, the rates fixed by the equalizing authorities in the several counties have been compared with the corresponding rates established by the State Tax Commission for the equalization of special franchise assessments. The latter rates have been selected for use as a standard, not with any idea that they were infallible. Unfortunately the Commission's field staff is too limited in numbers to enable it to cover the entire State annually with the thoroughness requisite for the best results. . . . but no question of honesty of purpose or method was anywhere raised. There can be no doubt, therefore, that the Commission's ratios consti-

tute the best available standard for the judgment of the local rates.

The method now used by engineers, scientists and statisticians for comparing two sets of related facts, such as we have here, is known as correlation. One set of facts is taken as the standard or criterion, as it is called, and the other set of facts is compared, or correlated, with it. The measure of comparison is called the coefficient of correlation. The whole number 1.000 has been taken arbitrarily by mathematicians as the measure of perfect correlation, and 0.000 as the indication of no correlation.

In the comparison we are making here, town equalization rates as determined by the State Tax Department are taken as the standard or criterion, and the rates for the same town are correlated with the State rates. The comparison is made separately for each of six counties. If in any county the local rates were the same as the State rates or varied in the same way, the coefficient of correlation would be 1.000 exactly, but if there was little or no relationship, the coefficient would be down around zero. . . .

TABLE

Comparison of County with State Equalization Rates in Selected Counties

County	Coefficient of Correlation
Jefferson	.921
Erie	.831
Franklin	.754
Albany	.683
Sullivan	.387
Steuben	.354

52. Forms of Judicial Documents

The following pages illustrate the general form and content of some of the more common documents used by the courts. Each state has its own forms of these documents, but there is no great amount of variation among them. The forms given below may be said to be typical, although to secure the exact wording in any particular state it is necessary to consult a "form book."¹

¹S. D. Puterbaugh, *Common Law Pleading and Practice* (9th ed., Chicago, 1917); S. D. Puterbaugh, *Chancery Pleading and Practice* (6th ed., Chicago, 1916); J. Lewson, *Annotated Forms of Pleading and Practice* (Chicago, 1914), 3 vols.; J. B. Winslow, *Forms of Pleading and Practice under the Code* (Chicago, 1915), 3 vols.

A civil suit is officially begun by filing a complaint against the person to be sued. This complaint is deposited with the clerk of the court, who then notifies the person who is sued by having the sheriff serve a *summons* on him. This document orders him to appear in court to answer the complaint. Failure so to appear and answer to the summons automatically gives the complainant judgment by default. In such an event, the property of the person sued may be sold to pay the amount of the judgment and the costs of the suit.

When trying a case the court endeavors to arrive at the truth, and one of the chief ways in which this is done is by hearing the testimony of witnesses. Both parties to the suit may ask the judge to order such witnesses to appear as they, respectively, desire; and this request is complied with by having the sheriff serve a *subpœna* on any person whose testimony is sought.

Complaint is sometimes made to the court that a person has been unlawfully arrested and is being wrongly held in prison. When such a complaint is made the judge issues a *writ of habeas corpus* compelling the jailor or sheriff to produce the person in court and to show why he is held in custody. When the prisoner is brought into court, the judge determines whether he is held legally. If it appears that he is not, the man is set free. Failure to obey a *subpœna* or a *writ of habeas corpus* renders one liable to contempt of court and subject to fine or imprisonment.

Before a prisoner can be placed on trial, it is necessary that a formal charge or accusation be presented to him. This is usually done by means of an *indictment* or *true bill*. This document is drawn up by a grand jury, after its members have heard the evidence against the man and have convinced themselves that there is reasonable ground for holding him for trial.

SOURCE—Documents furnished through the courtesy of L. Dow Nichols, Esq.

A. SUMMONS

STATE OF ILLINOIS, }	ss.	The People of the State of Illinois, To the Sheriff of said County, GREETING:
COUNTY OF COOK }		

WE COMMAND YOU THAT YOU SUMMON *Frank W. Steinmetz* if he shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the first day of the term thereof, to be holden at the Court House in the City of Chicago, in said Cook County, on the third Monday of *March*, A. D. 1925, to answer unto *The National Fire Brick Co., a corporation*, in a plea of Trespass on the case upon promises to the damage of said plaintiff, as it is said, in the sum of *One thousand five hundred* Dollars.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

[SEAL] WITNESS: THOMAS O. WALLACE, Clerk of our said Court, and the Seal thereof, at Chicago, in said County, this *Twenty-seventh* day of *February*, A. D. 1925.

THOMAS O. WALLACE, Clerk.

B. SUBPENA

STATE OF ILLINOIS, }	ss.	The People of the State of Illinois, To the Sheriff of said County, GREETING:
COOK COUNTY }		

WE COMMAND THAT YOU SUMMON *Samuel A. Brown* if he shall be found in your County, personally to be and appear before the Circuit Court of Cook County, on the *eighth* day of *April*, A. D. 1925, at 10:00 o'clock A. M., before the Hon. *John A. Swanson*, Room 824 at the Court House, in the City of Chicago, in said County, to testify and the truth to speak in a certain case now pending and undetermined in said Court, wherein *The National Fire Brick Co., a corporation*, is Plaintiff, and *Frank W. Steinmetz*, Defendant, on the part of the said *defendant*, and this he shall in no wise omit under the penalty of the law; and have you then and there this Writ.

[SEAL] WITNESS, THOMAS O. WALLACE, Clerk of our said Court, and the Seal thereof at Chicago, this *seventh* day of *April*, A. D. 1925.

THOMAS O. WALLACE, Clerk

C. HABEAS CORPUS WRIT

STATE OF ILLINOIS, }
 COOK COUNTY

SS.

The People of the State of
 Illinois, To Peter W. Hoff-
 man, Sheriff of Cook Coun-
 ty, Greeting:

WE COMMAND YOU, That you do forthwith, without ex-
 cuse or delay, bring or cause to be brought before Hon. *John A.
 Swanson*, one of the Judges of our Circuit Court of Cook County,
 now in session at the Court House in Chicago, in said County,
 the body of *David Wilson, alias Dick Shaw*, by whatever name
 or addition he is known or called, and who is unlawfully detained
 in your custody (as it is represented unto *John A. Swanson*, one
 of the Judges of said Court, by the petition of *Frances Wilson*),
 together with the day and cause of caption and detention; then
 and there to perform and abide such order and directions as our
 said Circuit Court of Cook County shall make in that behalf.

HEREOF make due return forthwith under the
 penalty of what the law directs.

[SEAL]

WITNESS, THOMAS O. WALLACE, Clerk of
 our said Circuit Court of Cook County, and the seal
 thereof, at Chicago, in said County and State, this
twenty-ninth day of April, A. D. 1925.

THOMAS O. WALLACE,
 Clerk.

To the Sheriff of said County to deliver.

D. INDICTMENT

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE
 NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

Northern District of Illinois, }
 Eastern Division;

SS.

Of the October Term,
 in the year 1922.

The grand jurors for the United States of America empaneled
 and sworn in the District Court of the United States for the
 Eastern Division of the Northern District of Illinois at the October
 Term of said court in the year 1922, and inquiring for said divi-
 sion and district, upon their oath present that JESHURA MI-
 YUCHA, alias John Howard, late of the city of Chicago, in the
 division and district aforesaid, on, to-wit, July 21, 1922, at Chi-
 cago aforesaid, in said division and district, unlawfully, know-
 ingly and feloniously did deposit in the post-office of the United

States at Chicago aforesaid, for mailing and delivery by the post-office establishment of the said United States, six certain obscene, lewd, lascivious and filthy pictures or photographs, which said pictures or photographs are so obscene, lewd, lascivious and filthy as to be offensive to the court here and improper to be spread upon the records thereof, wherefore the same are not set forth in this indictment; which said pictures or photographs were then and there enclosed in an envelope, and which said envelope containing said pictures or photographs, at the time and place when and where the same were so deposited in the post-office of the said United States for mailing as aforesaid, then and there bore two uncanceled United States two-cent postage stamps, and was directed and addressed to one Mr. G. Maruta, 1104 James Street, Seattle, Washington, and bore the return address "From Frank Kane, Chicago, Ill."; and the said grand jurors do further present that the said Jeshura Miyucha, alias John Howard, at the time and place of so depositing the said envelope containing said pictures or photographs in the said post-office of the United States at Chicago, Illinois, well knew the same to be obscene, lewd, lascivious and filthy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

EDWIN A. OLSON
United States Attorney

(Endorsement on back.)

No. 10200

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA

vs.

JESHURA MIYUCHA,
alias JOHN HOWARD

INDICTMENT

VIO. SEC. 211 C. C. (POSTAL LAWS)
(Mailing obscene pictures or photographs.)

A TRUE BILL

SAMUEL C. WILLIAMSON
Foreman

Filed this Nov. 3, 1922.

53. Rules of the Republican Party of Pennsylvania

The first party rules were adopted to prevent the more obvious abuses of party organizations which developed out of such devices as "snap-primaries," "packed conventions," and "gavel rule." They proved to be very unsatisfactory remedies for these abuses because the machine applied them only when it was to its advantage to do so, and at other times either evaded or deliberately disregarded them. To prevent this, the primary laws of many states supplemented and strengthened the rules and provided penalties for disregarding them. A few states placed the provisions of the rules themselves on the statute books.

Usually the rules are much more explicit and detailed than the statutes which have been enacted to regulate party organization. They provide for the hierarchy of party committees and conventions and set forth in considerable detail the powers which each body shall exercise. Although it should be remembered that the actual location of political power is seldom determined by written documents, whether they be constitutions of government or rules of a party, such documents are significant as attempts to regularize the struggle for the possession of this power.

SOURCE—*Rules of the Republican Party of the State of Pennsylvania, adopted June 18, 1921* (Philadelphia, 1921), 1-20.¹

RULE I

ORGANIZATION OF THE PARTY

Section 1. The organization of the Republican Party in the State of Pennsylvania shall consist of the following bodies:

First—Republican State Committee.

Second—Executive Committee of the Republican State Committee.

Third—Finance Committee of the Republican State Committee.

¹ These rules were furnished through the courtesy of Senator George Wharton Pepper of Pennsylvania.

Fourth—Republican County Committees, and such other subordinate committees as the rules of the State or County Committees shall provide.

ELIGIBILITY OF PARTY OFFICERS

Sec. 2. No person who is not a qualified Republican elector, as provided for by law, or who will not agree to support all the candidates of the Republican Party at the succeeding election, shall have the right to serve as a member of the Republican National Committee or as a delegate or an alternate delegate to a Republican National Convention or shall be eligible to membership or serve as an officer of the State, Executive, Finance or County Committee or of any other committee under these rules.

Sec. 3. Whenever it shall appear that any member of the Republican National, State, Executive or Finance Committee, or delegate or alternate delegate to a Republican National Convention is charged with not being a qualified Republican elector, or who opposes or is about to oppose the Republican Party or any of its candidates, or who neglects or refuses to attend to the duties of his office, the State Chairman shall appoint a committee of three qualified Republican electors of the State of Pennsylvania to investigate such charges. The committee shall notify the delegate or alternate delegate or member so charged of the time and place of hearing, and if, upon investigation, it finds such charges to be true and correct, it shall so report in writing to the State Chairman, who, in the case of a member of the National Committee or delegate or alternate delegate to a National Convention, shall notify the National Committee; in the case of a member of the State Committee, he shall declare the office vacant and notify the chairman of the County Committee wherein said member resides of said vacancy; and in the case of a member of the Executive or Finance Committee of the State Committee, he shall declare the office vacant and appoint another qualified elector to fill the unexpired term.

Sec. 4. The Chairman, Secretary and Treasurer of the Republican State Committee shall be of the male sex, and the Vice-Chairman and Assistant Secretary of the Republican State Committee shall be of the female sex.

RULE II

REPUBLICAN STATE COMMITTEE

Section 1. The general supervision, regulation and direction of the affairs of the Republican Party in Pennsylvania shall be vested in the Republican State Committee. The members of the Republican State Committee shall be elected by Senatorial districts. Each Senatorial district shall elect one male and one female member of the State Committee, except where a Senatorial district is composed of more than one county or part of a county, in which event there shall be elected in each county or part of a county embraced in said Senatorial district one member of the State Committee who may be of either sex. The Republican State Committee shall meet biennially for organization within the time prescribed by law, and at any other time, at the call of the State Chairman. The members of the State Committee in their respective districts shall have general control and management, under the advice and direction of the Chairman of the State Committee, of the campaign in their districts. The members of the State Committee shall keep the Chairman fully advised of the political conditions and of the requirements in their respective districts and look after the party's interests at all elections.

Sec. 2. At the biennial meeting for organization the members of the State Committee shall elect a Chairman, Vice-Chairman, Secretary, Assistant Secretary and a Treasurer. Their terms of office shall begin from the date of their election and continue for a period of two years, and until their successors shall have been duly elected and qualified. . . .

Sec. 3. At the biennial meeting for organization, in years in which a President is to be elected, the members of the State Committee shall elect a member of the Republican National Committee to represent the State of Pennsylvania, whose term of office shall begin from the date of said election and continue for a period of four years, and until a successor shall have been duly elected and qualified. . . .

Sec. 4. A majority of the entire State Committee shall constitute a quorum for the transaction of business at all meetings except as herein otherwise provided.

Sec. 5. The order of business of meeting of the State Committee shall be as follows:

First—Roll call of members.

Second—Reading, correcting and approving of minutes.

Third—Reports of committees.

Fourth—Financial matters.

Fifth—Inquiries on all matters of interest to the State Committee and the Republican Party.

Sixth—General and unfinished business.

Seventh—New and special business.

Eighth—General discussion.

Ninth—Adjournment.

Sec. 6. Five days' written or printed notice of all meetings of the State Committee shall be given by mail to each member of the committee.

Sec. 7. At all meetings of the State Committee the State Chairman shall preside. In his absence the Vice-Chairman shall preside, and in the absence of both the Chairman and Vice-Chairman the committee shall elect one of its number to preside.

Sec. 8. All elections of officers and nominations of candidates by the State Committee shall be by viva voce vote unless a roll call be demanded by not less than two members. When a roll call is demanded on any question before the State Committee the names of the members of the committee shall be called by Senatorial districts commencing with the first.

Sec. 9. Any absent member of the State Committee shall have the power to substitute by proxy any Republican elector, having the same qualifications as a member of the State Committee, to act for him or her before any of the State Committee meetings. Said proxy shall be in writing, signed and witnessed.

Sec. 10. In case the electors of any Senatorial district composed of one county shall fail to elect a member of the Republican State Committee, or a vacancy occurs from any cause, the respective County Committee within the Senatorial district in said county shall elect a member of the State Committee. . . .

Sec. 11. The State Committee shall maintain permanent headquarters at all times for the conduct of its affairs and the convenience of its members. The maintenance of the same shall be paid for out of the treasury of the Republican State Committee.

Sec. 12. The State Committee, if it deems proper, shall at its biennial meeting promulgate and adopt the platform of the Republican Party of the State of Pennsylvania.

Sec. 13. The State Chairman shall call a special meeting of the State Committee at the request of any twenty-five (25) members of the State Committee, which request and call shall state the object of such meeting, and no other business other than that specified in such request or call shall be transacted or considered at such meeting. One-third of all the elected and qualified members of the State Committee shall constitute a quorum at a special meeting, called as provided in this section.

Sec. 14. In case of the neglect or refusal of the State Chairman to call special meeting of the State Committee within five (5) days after requested so to do in pursuance of these rules, a majority of the entire State Committee shall be and is hereby authorized to issue a call duly signed by said members of the State Committee for a special meeting.

RULE III

STATE CHAIRMAN

Section 1. The Chairman of the Republican State Committee shall be the executive officer of the Republican Party in the State of Pennsylvania and as such shall put into operation these rules and all resolutions and matters pertaining to the State Committee and as such entitled to vote on all questions coming before it for consideration.

Sec. 2. The State Chairman shall on or before the first day of September in even-numbered years appoint an Executive and a Finance Committee and issue a call for the meetings to the members of said committees at a time and place designated by him. In case of any vacancies occurring in either of said committees the Chairman shall fill the same by appointment for the unexpired term. He shall also appoint such other committees as he may deem proper for the conduct of the affairs of the Republican State Committee.

Sec. 3. If there should be a vacancy in the office of State Chairman, caused by death, resignation, or otherwise, after the biennial meeting of the Republican State Committee and at least sixty (60) days before the next ensuing general election, the Secretary of the State Committee shall within ten days after said vacancy issue a call for a meeting of the State Committee for the

election of a successor to fill said vacancy. In case a vacancy occurs in the office of State Chairman within sixty (60) days preceding any general election, or in years in which no general election is held, the Secretary of the State Committee shall serve as acting Chairman and perform all the duties incumbent upon the Chairman.

Sec. 4. The State Chairman shall appoint such clerks and other officers of the State Committee as he may deem advisable.

Sec. 5. In case vacancies occur in the offices of Vice-Chairman, Secretary, Assistant Secretary or Treasurer of the State Committee the Chairman shall have full power and authority to appoint their successors for the unexpired term.

RULE IV

VICE-CHAIRMAN

Section 1. The Vice-Chairman, in the absence of the State Chairman, shall preside at all meetings of the State Committee, and under the supervision of the State Chairman shall have charge of the organization of Republican women voters of the State and shall be recognized as their representative.

RULE V

SECRETARY

Section 1. The Secretary of the State Committee shall attend the meetings of the State Committee and keep the minutes of its proceedings in a book provided for that purpose. Said record of the minutes shall be verified and attested by the Secretary and delivered into the hands of the State Chairman at the close of each meeting.

RULE VI

ASSISTANT SECRETARY

Section 1. The Assistant Secretary of the State Committee shall be under the direct supervision of the Vice-Chairman, and at all times be subject to the orders of the Vice-Chairman.

RULE VII

TREASURER

Section 1. The Treasurer of the State Committee shall be the custodian of all the moneys belonging to the State Committee and shall pay the same out only under the direction of the Chairman of the State Committee. He shall keep a strict account of all moneys received and paid out, with the date of such receipts and payments, from whom received, to whom paid, and for what purpose, which account shall at all times be accessible to the State Chairman.

Sec. 2. The Treasurer shall give bond for the faithful performance of his duties for such amount as may be determined by the Executive Committee, the premium on which shall be paid out of the treasury of the Republican State Committee.

Sec. 3. He shall after each general election file with the proper officer the statement required by the Act of Assembly, commonly known as the Corrupt Practices Act, and the several supplements thereto.

Sec. 4. At the end of his term of office he shall turn over to his successor all moneys, books and other papers of the State Committee remaining in his hands.

RULE VIII

EXECUTIVE COMMITTEE

Section 1. The Executive Committee shall be composed of not more than fifteen qualified Republican electors of the State of Pennsylvania, and shall be appointed by the State Chairman to serve until the third Wednesday after the Spring Primary in even-numbered years.

Sec. 2. The Executive Committee shall at all times act in an advisory capacity to the State Chairman, and the State Chairman and Vice-Chairman shall be ex-officio members of said committee and as such shall have the right to vote on all subjects brought before it for consideration.

Sec. 3. The Executive Committee is authorized and empowered to examine the rules of the Republican County Committees biennially and suggest such changes in them as may be necessary or expedient.

RULE IX

FINANCE COMMITTEE

Section 1. The Finance Committee shall be composed of not more than fifteen qualified Republican electors of the State of Pennsylvania, and shall be appointed by the State Chairman to serve until the third Wednesday after the Spring Primary in even-numbered years. The State Chairman and Vice-Chairman shall be ex-officio members of the Finance Committee and as such shall have the same power and authority as the other members of said committee.

Sec. 2. It shall be the duty of the Finance Committee to devise ways and means to properly finance the campaign, and it shall have the authority to communicate in the name of the committee with such persons as it may deem necessary. . . .

RULE X

NATIONAL COMMITTEEMAN

Section 1. The member of the Republican National Committee from the State of Pennsylvania shall be ex-officio a member of the State Committee, with full powers of a regularly elected member of said State Committee.

Sec. 2. The member of the Republican National Committee from the State of Pennsylvania shall be ex-officio a member of the Executive Committee of the Republican State Committee, and as such shall have the right to vote on all subjects brought before it for consideration.

Sec. 3. The member of the Republican National Committee from the State of Pennsylvania shall be ex-officio a member of the Finance Committee of the Republican State Committee, and as such shall have the right to vote on all subjects and participate in all matters brought before it for consideration or action.

Sec. 4. Any vacancy caused by death, resignation or otherwise in the office of National Committeeman from Pennsylvania shall be filled by the Republican State Committee for the unexpired term.

RULE XI

VACANCIES

Section 1. Any vacancy or vacancies happening or existing on the Republican ticket for any office to be voted for by the electors of the State at large shall be filled by the State Committee, which shall have full authority to make and certify said nomination or nominations.

Sec. 2. In case any vacancy happens or exists on the Republican ticket in any Congressional, Senatorial or Judicial district composed of more than one county, such vacancy shall be filled by conferees selected by the county committees of the respective counties, or their duly accredited representatives, representing the district in which said vacancy occurs, and each county, in the district, shall be entitled to at least one conferee. In counties containing more than one thousand votes for the nominee of the Republican Party for President at the last preceding Presidential election an additional conferee shall be chosen for each additional thousand votes. The meeting of the conferees shall be held at such time and place as shall be fixed by the Chairman of the State Committee. Should said conferees be unable to agree within ten days after the representative Republicans from each county in the district have met as aforesaid, the Chairman of the Republican State Committee shall select a representative Republican residing in the district, who shall act as umpire or referee in making a nomination.

RULE XII

COUNTY COMMITTEES

Section 1. The County Committees are hereby authorized and empowered to make such rules to be operative in their respective counties for the selection and organization of the members thereof and to fill vacancies within their respective districts not inconsistent with these rules and the law as shall be necessary for their government and the promotion of the interest of the party.

RULE XIII

AMENDMENTS TO RULES

Section 1. The foregoing rules may be altered or amended from time to time by a two-thirds vote in the affirmative of the

members of the State Committee present at a meeting of the same; provided that ten days' notice shall be given each member of any proposed alteration or amendment to said rules.

Sec. 2. Any rule or rules may be suspended at or during any meeting of the State Committee by the affirmative vote of nine-tenths of the members present.

Sec. 3. These rules shall go into effect immediately upon their adoption by the State Committee when all former rules shall be superseded and repealed.

54. The Minnesota Corrupt Practices Act

It is obvious that a popular election may yield the opposite of a real popular choice unless measures are taken to prevent unfair, corrupt, and fraudulent practices. For this reason, the legislatures of most of the states have taken steps to curb the more reprehensible of these practices. Just what constitutes a "corrupt practice" has long been a matter of dispute, and it is not surprising to find considerable variation in the laws of different states. An act which is considered perfectly legal in one state may be punished by a heavy fine or imprisonment in another.

Speaking broadly, corrupt practice laws fall into two classes. Those in the first class seek to protect the electoral process itself from such abuses as repeating, personation, ballot-box stuffing, fraudulent counting, and intimidation of the voters. Registration requirements, provisions for bi-partisan election boards, and laws prescribing use of the Australian ballot may be cited as examples of this type. Many of the states have gone further and have attempted to protect the campaign from practices that would tend to give one of the contestants a disproportionate influence over the voters. It is this second type of legislation which is usually termed the "corrupt practices act." It frequently aims to control the sources of revenue for the campaign by prohibiting or limiting certain kinds of contributions and by requiring publicity of the amounts collected and expended by each contestant or party. There

is usually some provision for controlling the expenditures by prohibiting payments for certain purposes, and by placing a limit on the total amount that may be spent for campaign purposes.

The following provisions of the Minnesota Corrupt Practices Act illustrate each of these features. Although the measure is poorly drawn in several respects, it covers more ground and is stricter than similar laws found in most of the other states. For these reasons, it will repay careful study.

SOURCE—*General Laws of the State of Minnesota, 1912* (Minneapolis, 1912), Chap. 3, sects. 1-41, pp. 23-40; Harvey, Hulbert (comp.), *General Statutes of Minnesota, 1923* (St. Paul, 1924), sects. 538-573, pp. 78-83; Tiffany, F. B. (comp.), *General Statutes of Minnesota, 1913* (St. Paul, 1913), sects. 567-609, pp. 128-138; Hilton, C. L. (comp.), *Minnesota Election Laws, 1924* (St. Paul, 1924), 135-150.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. No candidate for the nomination or election to any elective office in this state coming within the provisions of this act shall directly or indirectly pay, expend or contribute any money or other valuable thing, or promise to do so, except for the following purposes, which are hereby declared to be legal expenses.

(1) For the candidates' necessary personal traveling expenses; for postage, telegraph, telephone, or other public messenger service.

(2) For rent and necessary furnishing of hall or room during such candidacy, for the delivery of speeches, relative to principles or candidates.

(3) For payment of speakers and musicians at public meetings, and their necessary traveling expenses.

(4) Printing and distribution of list of candidates, sample ballots, pamphlets, newspapers, circulars, cards, hand bills, posters and announcements relative to candidates, or public issue or principles.

(5) For copying and classifying poll lists, for making canvasses of voters and for challengers at the polls.

(6) For filing fees to the proper public officer, and if nominated at any primary for contributions to the party committee.

(7) For campaign advertising in newspapers, periodicals, or magazines pursuant to the provisions of section 2.

SEC. 2. No publisher of a newspaper, periodical or magazine shall insert either in the advertising columns of such newspaper, magazine or periodical, or elsewhere therein any matter paid or to be paid for which is intended or tends to influence directly or indirectly any voting at any primary or general election unless at the head of said matter is printed in pica capital letters the words "Paid Advertisement," and unless there is also a statement at the head of said matter of the amount paid or to be paid therefor, the name and address of the candidate in whose behalf the matter is inserted and of any other person, if any, authorizing the publication and the name of the author thereof. No publisher of any newspaper, periodical or magazine published within this state shall insert therein either in the advertising column of such newspaper, magazine, periodical, or elsewhere therein, any matter whatsoever of a political nature, or any political editorial relative to a candidate for any public office, unless the publisher thereof shall file in the office of the secretary of state of this state within six months before the holding of any primary or general election, or within ten days after the calling of and before the holding of any special election, a sworn statement which shall contain the names of the owners of such paper, and if such paper be a corporation, the names and addresses of the owners of the shares of stock of such corporation.

SEC. 3. Every candidate and every member of any personal campaign or party committee, who shall either in his own name or in the name of any other person, own any financial interest in any newspaper or periodical, circulating in part or in whole in Minnesota, shall, before such newspaper or periodical shall print any matter otherwise than as is provided in section 2, which is intended or tends to influence, directly or indirectly, any voting at any election or primary in this state, file in the office of the auditor of the county in which he resides a verified declaration, stating definitely the newspaper or periodical in which or over which he has such financial interest or control, and the exact nature and extent of such interest or control. . . .

SEC. 4. No owner, publisher, editor, reporter, agent or employe, of any newspaper or other periodical, shall, directly or indirectly, solicit, receive or accept any payment, promise or compensation, nor shall any person pay or promise to pay, in

any manner compensate any such owner, publisher, editor, reporter, agent or employe, directly or indirectly, for influencing or attempting to influence through any printing matter in such newspaper any voting at any election or primary through any means whatsoever, except through the matter inserted in such newspaper or periodical as "Paid Advertisement," and so designated as provided by this act.

SEC. 5. No disbursement shall be made and no obligation, express or implied, to make such disbursement, shall be incurred by or on behalf of any candidate for any office under the constitution or laws of this state, or under the ordinance of any town or municipality of this state in his campaign for nomination and election, which shall be in the aggregate in excess of the amounts herein specified, namely:

1. For governor, seven thousand dollars.
2. For other state officers, thirty-five hundred dollars.
3. For state senator, six hundred dollars.
4. For member of house of representatives, four hundred dollars.
5. For presidential elector-at-large, five hundred dollars, and for presidential elector for any congressional district, one hundred dollars.

6. For any county, city, village or town officer, for any judge or for any officer not hereinbefore mentioned, who, if nominated and elected, would receive a salary, a sum not exceeding one-third of the salary to which such person would, if elected, be entitled during the first year of his incumbency in such office. If such person, when nominated and elected, would not receive a salary, a sum not exceeding one-third of the compensation which his predecessor received during the first year of such predecessor's incumbency. If such an officer, when nominated and elected, would not receive a salary and if such officer had no predecessor, and in all cases not specifically provided for, one hundred dollars, and no more.

SEC. 6. No person shall demand, solicit, ask or invite any payment or contribution of any religious, charitable or other causes or organization, supposedly to be primarily for the public good, from any candidate for nomination or election, or to subscribe for the support of any club, or organization, or to buy tickets to any entertainment or ball or to pay for space in any book, program, periodical or publication, nor shall such demand

or solicitation be made upon any committee. Provided, however, this shall not apply to the solicitation of any business advertisement in periodicals in which the candidate was a regular contributor, prior to his candidacy, nor to ordinary business advertisements, nor to regular payments of any organization, religious, charitable or otherwise, of which he was a member, or to which he was a contributor for more than six months before his candidacy, nor to any ordinary contribution at church services.

SEC. 7. Any person or committee who shall publish . . . any literature or any publication tending to influence voting at any primary or election which fails to bear on the face thereof the name and address of the author, the name and address of the candidate in whose behalf the same is published, . . . and any person, firm, corporation or committee who shall knowingly make or publish or cause to be published, any false statement in relation to any candidate or proposition to be voted upon, which statement is intended to or tends to affect any voting at any primary or election, shall be guilty of a misdemeanor. . . .

SEC. 8. . . . No person, firm or co-partnership shall disburse, expend or contribute in any manner whatsoever for political purposes during any primary or election, a sum of money in excess of fifty dollars, except through a political committee.

SEC. 9. No person shall pay, or promise to reward another in any manner or form for the purpose of inducing him to be or refrain from or cease being a candidate, and no person shall solicit any payment, promise or reward from another for such purpose.

SEC. 10. No person or candidate shall, either by himself or by any other person, while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat or drink or other entertainment or provision, clothing, liquors, cigars or tobacco, to or for any person for the purpose of or with intent or hope to influence that person or any other person to give or refrain from giving his vote at such primary or election to or for any candidate or political party ticket, or measure before the people. . . . No elector shall accept or take any such meat, drink, entertainment, provision, clothing, liquor, cigars, or tobacco, and such acceptance shall be ground of challenge to his vote and of rejecting his vote on a contest.

SEC. 11. No person shall directly or indirectly by himself or

any other person in his behalf, make use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict by himself, or any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel such person to vote or refrain from voting for any candidate or the ticket of any political party, or any measure before the people. . . .

SEC. 12. Any candidate who, before or during any primary or election campaign, makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager on the result of the primary or election in his electoral district, in any part thereof, or on any event or contingency relating to any pending primary or election, or who provides money or other valuable thing to be used by any person in betting or wagering upon the results of any impending primary or election, shall be guilty of violation of this act. Any person, who for the purpose of influencing the result of any primary or election, makes any bet or wager of anything of pecuniary value on the result of such primary or election, in his electoral district or any part thereof, or of any pending primary or election, or on any event or contingency relating thereto, shall be guilty of a violation of this act, and in addition thereto, any such act shall be a ground of challenge against his right to vote.

SEC. 13. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election for any purpose, connected therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty it is to act as challenger and watch the count of official ballots. No person shall buy, sell, give or provide any political badges, buttons or other insignia to be worn at or about the polls on the day of any primary or election. . . . No person or committee, or organization shall convey or furnish any vehicle for conveying or bear any portion of any expense of conveying any voter to or from the polls, but this provision shall not apply to persons of the same household, nor shall it prohibit two or more voters from providing joint transportation for themselves by mutual agreement at their own expense.

SEC. 14. (1) It shall be unlawful for any person within one hundred feet of the building in which any polling place is situated

on the day of any primary or election to ask, solicit or in any manner try to induce or persuade any voter on such primary or election day to vote for or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by a fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days or by both such fine and imprisonment.

(2) Any person who shall at any place on the day of any primary or election circulate or distribute, or cause to be circulated or distributed, any campaign cards, candidates' cards, placard or campaign literature of any kind whatsoever, shall be guilty of a misdemeanor.

SEC. 15. No candidate shall make any disbursement for political purposes except under his personal direction which for any purpose shall be considered his act, through a party committee, or through a personal campaign committee, whose authority to act shall be filed, as provided in this act.

SEC. 16. Any candidate may select a single personal campaign committee to consist of one or more persons. Before any personal campaign committee shall make any disbursement in behalf of any candidate, or shall incur any obligation, expressed or implied, to make any disbursement in his behalf, such candidate shall file with the filing officer of such candidate a written statement signed by such candidate, setting forth that such personal campaign committee has been appointed and giving the name and address of each member thereof and of the secretary thereof. If the campaign committee consists of only one person, such person shall be deemed the secretary thereof. . . .

SEC. 17. No personal campaign or party committee shall make any disbursement except:

(1) For maintenance of headquarters and for hall rentals incident to the holding of public meetings.

(2) For necessary stationery, postage, telegraph, telephone, messenger and clerical assistance to be employed at a candidate's headquarters or at the headquarters of the committee, incident to the writing, addressing and mailing of letters and campaign literature.

(3) For necessary expenses, incident to the furnishing and printing of badges, banners and other insignia, to the printing and posting of handbills, posters, lithographs and other campaign literature, and the distribution thereof through the mails or otherwise.

(4) The campaign advertising in newspapers, periodicals or magazines, as provided in this act.

(5) For wages, and actual necessary personal expenses of public speakers, organizers and musicians.

(6) For traveling expenses of members of this committee.

(7) For preparing poll lists and for challengers at the polls.

SEC. 18. . . . No candidate and no personal campaign or party committee shall pay any bill, charge or claim so incurred prior to any primary or election, which is not so presented within ten days after such primary or election.

SEC. 19. (1) Every candidate, and the secretary of every personal campaign and party committee shall, on the second Saturday occurring after such candidate or committee has first made a disbursement or first incurred any obligation, expressed or implied, to make a disbursement for political purposes, and thereafter, on the second Saturday of each calendar month, until all disbursements shall have been accounted for and also on the Saturday preceding any election or primary, file a financial statement verified upon the oath of such candidate or upon the oath of the secretary of such committee, as the case may be, which statements shall cover all transactions not accounted for and reported upon in statements theretofore filed. Each statement after the first shall contain a summary of all preceding statements, and summarize all items theretofore reported under the provisions of this act. . . .

(3) Each statement shall give in full detail:

(a) Every sum of money and all property, and every other thing of value, received by such candidate or committee during such period from any source whatsoever which he or it uses or has used, or is at liberty to use for political purposes, together with the name of every person or source from which each has received. . . .

(b) Every promise or pledge of money, property or other thing of value, received by such candidate or committee during such period, the proceeds of which he uses or has used, or is at liberty to use for political purposes, together with the names of the persons by whom each was promised or pledged. . . .

(c) Every disbursement by such candidate or committee for political purposes during such period. . . .

(d) Every obligation, expressed or implied, to make any disbursement incurred by such candidate or committee for political purposes during such period. . . .

SEC. 20. Blanks for all statements required by this act shall be prepared by the Secretary of State. . . .

SEC. 21. The name of a candidate chosen at a primary election or otherwise shall not be printed on the official ballot for the ensuing election, unless there has been filed by or on behalf of said candidate and by his personal campaign committee, if any, the statements of accounts and expenses relating to nominations required by this act.

SEC. 22. No person shall, in order to aid or promote his nomination or election, directly or indirectly, himself, or through any other person, appoint or promise to appoint any person, or secure or promise to secure or aid in securing the appointment, nomination or election of any person to any public or private position or employment, or to any position of honor, trust or emolument. . . .

SEC. 23. No person being an employer or acting for or in behalf of any employer shall give, distribute or cause to be given or distributed to any of his employes, any printed or written matter containing any threat, notice or information, or make any threat, verbal or otherwise, that in case any particular ticket or a political party or organization or candidate shall be elected or any measure referred to a vote of the people shall be adopted, work in his place or establishment will cease, in whole or in part, or his place or establishment will be closed up, or the salaries or wages of the workmen or employes be reduced or other threats, expressed or implied, intended or calculated to influence the political opinion or action of his workmen or employes. . . .

SEC. 26. No corporation doing business in this state shall pay or contribute, or offer, consent, or agree to pay or contribute, directly or indirectly, any money, property, free service of its officers or employees or thing of value to any political party, organization, committee or individual for any political purpose whatsoever, or to promote or defeat the candidacy of any person for nomination, election or appointment to any political office. If any corporation shall be convicted of violating any of the provisions of this act, it shall be subject to a penalty in the amount

of not exceeding ten thousand (10,000) dollars to be collected as other claims or demands for money are collected; and if a domestic corporation, in addition to said penalty, it may be dissolved; and if a foreign or non-resident corporation, in addition to said penalty, its right to do business in this state may be declared forfeited.

SEC. 27. Any officer, employe, agent, or attorney or other representative of any corporation, acting for or in behalf of such corporation who shall violate this act, shall be punished upon conviction by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the state prison for a period of not less than one nor more than five years, or by both such fine and imprisonment in the discretion of the court or judge before whom such conviction is had. . . .

SEC. 29. Any person or persons who shall aid, abet, or advise a violation of this act, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished as provided in this act. . . .

SEC. 33. Any twenty-five voters of the state, or of any political division thereof, may contest the right of any person to nomination, position, or office for which said voters had the right to vote, on the ground of deliberate, serious and material violation of the provisions of this act or of any other provisions of law relating to nominations and elections. Any defeated candidate for said nomination, position or office may make said contest. Said procedure shall be commenced by petition filed in the district court of the county in which the candidate whose election is contested resides, and the contest shall be carried on according to law. . . .

SEC. 35. Any proceeding under this act contesting any nomination or election must be commenced within ten days after the day of the primary or thirty days after a general election, unless the ground of action is discovered from the statements filed under this act, in which event the action must be commenced within ten and thirty days after such discovery, respectively. . . .

SEC. 36. A candidate elected to an office, and whose election thereto has been annulled and set aside for any offense mentioned in this act, shall not, during the period fixed by law as the term of such office, be appointed to fill any vacancy which may occur in such office. . . . Any appointment to an office made in violation of or contrary to the provisions of this section shall be void. . . .

SEC. 41. Any person violating any provisions of this act except as otherwise provided herein, shall upon conviction thereof

be punished by imprisonment in the county jail for a period of not less than one month nor more than one year, or by imprisonment in the state prison for a period of not less than one year nor more than three years, or by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by both such fine and imprisonment; and no person so convicted shall be permitted to take or hold office to which he was elected, if any, or receive the emoluments thereof.

55. Sample Ballots

The election laws of each state prescribe the kind of ballot to be used in each election, and consequently there are practically as many forms of ballots as there are state laws on the subject. It is possible, however, to group the kinds of ballots used into a small number of types, and the sample ballots given on the following pages illustrate certain of the more significant kinds now in use. With the exception of the recall ballot, all are taken from the primaries and elections of 1924. Each ballot has been greatly reduced in size to make it more easy to handle.

The primary ballot of South Dakota illustrates all of the features of the ballots commonly used in primary elections. In addition, it contains some features peculiar to the Richards primary law of that state. It shows the form of ballot used in the presidential preference primary. The voter is given an opportunity, not only to help choose the delegates to the national convention, but to express his preference among the aspirants for the nomination. The ballot as actually used is fourteen inches square.

The Indiana ballot is typical of the party column type, which is more prevalent than any other. The candidates are arranged in columns according to their party endorsements, and at the head of each column is a party circle with a distinctive emblem to aid the uninformed or illiterate voter. By marking a cross inside the circle a vote is cast for all of the candidates in the list under it. The size of the ballot is twenty-four by thirty inches.

The Massachusetts ballot is a good illustration of the "office block" type of arrangement, in which the names of the candidates are listed under the office to be filled rather than under a party name or emblem; although each candidate is designated as "Republican," "Democrat," etc. There is no opportunity to cast a "straight" vote for all of the candidates of one party by a single operation, but only one cross is necessary to vote for all the presidential electors favoring one candidate. The ballot contains an additional column with seven referendum measures and is sixteen by twenty-four inches in size as actually used.

One method of preventing a common type of election fraud is shown in the California ballot. Each voting paper has a number which is torn off when it is deposited in the ballot box. This number is compared with the stub showing the number on the ballot given to the voter before he entered the booth. By this device it is possible for the election officials to make sure that none but the official ballots given to the voters and marked in the booth are cast. The manner in which the initiative and referendum measures are arranged on the ballot in California is also shown. The reproduction is from an official sample ballot which was sent to every registered voter by the county clerk in each county. The actual ballot is nineteen inches square.

The recall ballot shows the form used in a recall election in Wildwood, N. J., on July 12, 1921. The ballot is marked as it should be in order to make the recall effective, and shows not only the proposal of recall, but the simultaneous election of a successor to fill the place of the recalled official. In this particular election, one of the three commissioners resigned before the election and thus escaped recall.

SOURCES—The recall ballot is used through the courtesy of Messrs. Harper and Brothers, and is taken from R. C. Brooks, *Political Parties and Electoral Problems* (New York, 1923), 494. The other ballots were furnished through the courtesy of Dr. Harold F. Gosnell, of the University of Chicago.

Republican Party Sample Primary Ballot, Hughes County, South Dakota

PRIMARY ELECTION, MARCH 25, 1924

To vote for a person whose name is printed on the ballot, mark a cross (X) in the square (□) to the left of the candidate for whom you desire to vote.

NAME OF OFFICE (and number of vote for)	INDEPENDENT CANDIDATES (Proposed by Individual Petition)	REPRESENTATIVE PROPOSAL National Summary of Principle Relieve Farmers, Prohibition; World Court; Aid Veterans; Bonus. State Summary of Principle Taxation Slashed, Extravagance Stopped; Abuses Political Machinery Curbed. County Summary of Principle	REPRESENTATIVE PROPOSAL National Summary of Principle Agricultural Development and Co-operative Marketing State Summary of Principle Agricultural Development and Co-operative Marketing County Summary of Principle
Vote for one for Party State Central Committee	☐	☐ L. L. BRANCH	☐
Vote for one for Party State Chairman	☐	☐	☐ GEO. W. WRIGHT
Vote for one for National Committee	☐	☐	☐ W. E. MILLIGAN
Vote for one for President United States	☐ HIRAM W. JOHNSON	☐	☐ CALVIN COOLIDGE
Vote for five for Presidential Electors	☐ ALAN BOGUE	☐	☐ PHILO HALL
"	☐ ALBERT NORBY	☐	☐ FRED WILSON
"	☐ E. L. SENN	☐	☐ HELEN GAMBLE
"	☐ J. H. WOOLEY	☐	☐ MRS. W. S. HILL
"	☐ DONALD McLEAN	☐	☐ FRED CHESLEY
Vote for one for United States Senator	☐	☐ THOMAS STERLING	☐ WM. H. McMASTER
Vote for one for Representative in Congress, Second District	☐	☐ HOWARD G. FULLER	☐ ROYAL C. JOHNSON
Vote for one for Superintendent of Public Instruction	☐	☐ FRED L. SHAW	☐ C. G. ST. JOHN
Vote for one for Sheriff	☐ OUS KLEINSCHMIDT	☐ JOHN W. LAUGHLIN	☐

Vote for thirteen Delegates to National Convention	Delegate		Alternate		Delegate		Alternate			
	☐	PETER NORBECK	☐	HARLAN J. BUSHFIELD	☐	☐	☐	S. H. ELROD	☐	R. D. JONES
"	☐	S. X. WAY	☐	HOWARD MANCHESTER	☐	☐	☐	A. W. CAMPBELL	☐	C. L. BATES
"	☐	GILBERT G. COTTAM	☐	HENRY C. MUNDT	☐	☐	☐	JOHN B. HANTEN	☐	A. H. MOORE
"	☐	ROBERT O. SCHABER	☐	JOHN W. PARSONS	☐	☐	☐	C. H. BURKE	☐	A. A. CHAMBERLAIN
"	☐	CHARLES J. BUELL	☐	AL. JONES	☐	☐	☐	W. L. BAKER	☐	GEO. W. BURNSIDE
"	☐	P. W. DOUGHERTY	☐	W. I. NOBLE	☐	☐	☐	E. F. WANZER	☐	P. D. BURR
"	☐	BOYD WALES	☐	RAY A. NOLD	☐	☐	☐	DAN E. HANSON	☐	L. MILLER
"	☐	HARRY D. SEWALL	☐	J. P. SHIRK	☐	☐	☐	EUNICE PEABODY	☐	ROY WILLY
"	☐	E. B. SERR	☐	SAMUEL STRAYER	☐	☐	☐	H. R. HANLEY	☐	E. F. JONES
"	☐	A. O. RINGSRUD	☐	W. C. CAVANAUGH	☐	☐	☐	E. O. PRESCOLL	☐	DAVID RICHARDS
"	☐	C. E. OLSTAD	☐	C. F. BARBER	☐	☐	☐	R. E. DRISCOLL	☐	E. E. PATTERSON
"	☐	GEO. E. PFEIFLE	☐	W. K. WICKERSHAM	☐	☐	☐	J. O. VAN NICE	☐	P. J. DUNN
"	☐	OLAF EIDEM	☐	WALTER L. JOHNSON	☐	☐	☐	JOHN A. BUSHFIELD	☐	MRS. C. N. McILVAINE



Republican Ticket.

For Presidential Electoral-Large.
GEORGE J. WATTEMPER.

REP.

For Presidential Electoral-Large.
MARY A. SLEETH.

REP.

District Electoral.
First District.
BENJAMIN F. HUFFMAN.

REP.

Second District.
W. EDWARD SHOWERS.

REP.

Third District.
NOBLE L. MOORE.

REP.

Fourth District.
WILLIAM C. IRWIN.

REP.

Fifth District.
ANDREW A. SPEARS.

REP.

Sixth District.
JOHN W. JUDKINS.

REP.

Seventh District.
CALEB S. DENNY.

REP.

Eighth District.
GEORGE A. BALL.

REP.

Ninth District.
WILLIS E. DYE.

REP.



Democratic Ticket.

For Presidential Electoral-Large.
DANIEL W. SIMMS.

DEM.

For Presidential Electoral-Large.
EVANS WOOLLEN.

DEM.

District Electoral.
First District.
AMON CLABENCE TEOMAS.

DEM.

Second District.
INMAN H. FOWLER.

DEM.

Third District.
MICHAEL L. WAGNER.

DEM.

Fourth District.
ROBERT D. H. REAP.

DEM.

Fifth District.
JOHN M. RAWLEY.

DEM.

Sixth District.
JESS E. STEVENS.

DEM.

Seventh District.
CORTEZ BLUE.

DEM.

Eighth District.
WILLIAM H. EICHORN.

DEM.

Ninth District.
HARVEY H. FLORA.

DEM.



Socialist Party Ticket.

For Presidential Electoral-Large.
[Name obscured]

SOC.

For Presidential Electoral-Large.
[Name obscured]

SOC.

District Electoral.
First District.
[Name obscured]

SOC.

Second District.
[Name obscured]

SOC.

Third District.
[Name obscured]

SOC.

Fourth District.
[Name obscured]

SOC.

Fifth District.
[Name obscured]

SOC.

Sixth District.
[Name obscured]

SOC.

Seventh District.
[Name obscured]

SOC.

Eighth District.
[Name obscured]

SOC.

Ninth District.
[Name obscured]

SOC.



Prohibition Ticket.

For Presidential Electoral-Large.
HENRY S. BONSB.

PROH.

For Presidential Electoral-Large.
MARTIN DAVIS.

PROH.

District Electoral.
First District.
ERNEST BOBERG.

PROH.

Second District.
JAMES RANSOM.

PROH.

Third District.
JESSE S. DAVIS.

PROH.

Fourth District.
CHARLES WALTERS.

PROH.

Fifth District.
WILLIAM F. WEBSTER.

PROH.

Sixth District.
JOHN E. EVER.

PROH.

Seventh District.
ADALINE DENNY.

PROH.

Eighth District.
AMOS UNDERWOOD.

PROH.

Ninth District.
JOHNATEAN JOHNSON.

PROH.



LaFollette Progressive Ticket.

For Presidential Electoral-Large.
SADIE E. SCOTT.

L.F.P.

For Presidential Electoral-Large.
JAMES H. JOB.

L.F.P.

District Electoral.
First District.
JOHN V. FITZSIMMONS.

L.F.P.

Second District.
JOHN B. PAGE.

L.F.P.

Third District.
JOHN A. BARKLEY.

L.F.P.

Fourth District.
WILLIAM R. EVERROAD.

L.F.P.

Fifth District.
FISH DISTRICT.
MARSH D. CUBBY.

L.F.P.

Sixth District.
JONAS E. DONSON.

L.F.P.

Seventh District.
JOHN B. KINGSBURY.

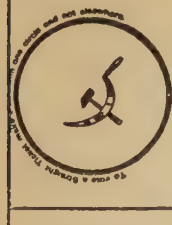
L.F.P.

Eighth District.
ALBERT MCY.

L.F.P.

Ninth District.
MARTIN O'CONNOR.

L.F.P.



The Workers Party Ticket.

For Presidential Electoral-Large.
BARRY W. GARNER.

W.P.

For Presidential Electoral-Large.
W. F. JACKMAN.

W.P.

District Electoral.
First District.
[Name obscured]

W.P.

Second District.
[Name obscured]

W.P.

Third District.
[Name obscured]

W.P.

Fourth District.
[Name obscured]

W.P.

Fifth District.
[Name obscured]

W.P.

Sixth District.
[Name obscured]

W.P.

Seventh District.
[Name obscured]

W.P.

Eighth District.
[Name obscured]

W.P.

Ninth District.
[Name obscured]

W.P.

117	Twelfth District, WILLIAM M. GRIFFIN.	100L	Twelfth District, HARVEY W. MOLEY.	100L	Twelfth District, CHARLES W. ANGLIN.	100L	Twelfth District, M. C. SCHLAEDER.	L.T. PRO.	Twelfth District, EDWARD B. HENSLEY.	100L	Twelfth District, WALTER E. CLEMENT.	100L	For Governor, ED JACKSON.	100L	For Lieutenant-Governor, FRED HAROLD VAN OERAN.	100L	For Secretary of State, FREDERICK E. SCHORTE- MEIER.	100L	For Auditor of State, LEWIS S. BOWMAN.	100L	For Treasurer of State, BERNHARDT E. URBAENS.	100L	For Attorney-General, ARTHUR L. GILLIOM.	100L	For State Superintendent of Public Instruction, HENRY N. SHERWOOD.	100L	For Judge Supreme Court, First District, BENJAMIN M. WILLOUGHBY.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Appellate Court, First Division, FRANCIS M. THOMPSON.	100L	For Judge Appellate Court, Second Division, ETHAN A. DAUSMAN.	100L	For Reporter of Supreme Court, EMMA EATON WHITE.	100L
118	Thirteenth District, JOHN O. MOTTO.	100L	Thirteenth District, CHARLES W. ANGLIN.	100L	Thirteenth District, CHARLES W. ANGLIN.	100L	Thirteenth District, MARGARET M. HOLA.	L.T. PRO.	Thirteenth District, WALTER E. CLEMENT.	100L	Thirteenth District, WALTER E. CLEMENT.	100L	For Governor, ED JACKSON.	100L	For Lieutenant-Governor, HENRY E. NEWLUND.	100L	For Secretary of State, ARTHUR J. HAMBURG.	100L	For Auditor of State, ROBERT BRACKEN.	100L	For Treasurer of State, HARRY L. ARNOLD.	100L	For Attorney-General, HARVEY HARMON.	100L	For State Superintendent of Public Instruction, SAMUEL L. SCOTT.	100L	For Judge Supreme Court, First District, GEORGE E. DENTON.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Appellate Court, First Division, JOHN C. MAUTT.	100L	For Judge Appellate Court, Second Division, VALENTINE E. LIVENGOOD.	100L	For Reporter of Supreme Court, JOHN W. KEEN.	100L
119	Fourteenth District, JOHN O. MOTTO.	100L	Fourteenth District, CHARLES W. ANGLIN.	100L	Fourteenth District, CHARLES W. ANGLIN.	100L	Fourteenth District, MARGARET M. HOLA.	L.T. PRO.	Fourteenth District, WALTER E. CLEMENT.	100L	Fourteenth District, WALTER E. CLEMENT.	100L	For Governor, ED JACKSON.	100L	For Lieutenant-Governor, HENRY E. NEWLUND.	100L	For Secretary of State, ARTHUR J. HAMBURG.	100L	For Auditor of State, ROBERT BRACKEN.	100L	For Treasurer of State, HARRY L. ARNOLD.	100L	For Attorney-General, HARVEY HARMON.	100L	For State Superintendent of Public Instruction, SAMUEL L. SCOTT.	100L	For Judge Supreme Court, First District, GEORGE E. DENTON.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Appellate Court, First Division, JOHN C. MAUTT.	100L	For Judge Appellate Court, Second Division, VALENTINE E. LIVENGOOD.	100L	For Reporter of Supreme Court, JOHN W. KEEN.	100L
120	For Governor, ED JACKSON.	100L	For Governor, ED JACKSON.	100L	For Governor, ED JACKSON.	100L	For Governor, ED JACKSON.	L.T. PRO.	For Governor, ED JACKSON.	100L	For Governor, ED JACKSON.	100L	For Governor, ED JACKSON.	100L	For Lieutenant-Governor, HENRY E. NEWLUND.	100L	For Secretary of State, ARTHUR J. HAMBURG.	100L	For Auditor of State, ROBERT BRACKEN.	100L	For Treasurer of State, HARRY L. ARNOLD.	100L	For Attorney-General, HARVEY HARMON.	100L	For State Superintendent of Public Instruction, SAMUEL L. SCOTT.	100L	For Judge Supreme Court, First District, GEORGE E. DENTON.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Appellate Court, First Division, JOHN C. MAUTT.	100L	For Judge Appellate Court, Second Division, VALENTINE E. LIVENGOOD.	100L	For Reporter of Supreme Court, JOHN W. KEEN.	100L
121	For Lieutenant-Governor, FRED HAROLD VAN OERAN.	100L	For Lieutenant-Governor, FRED HAROLD VAN OERAN.	100L	For Lieutenant-Governor, FRED HAROLD VAN OERAN.	100L	For Lieutenant-Governor, ALBERT STANLEY.	L.T. PRO.	For Lieutenant-Governor, ALBERT STANLEY.	100L	For Lieutenant-Governor, ALBERT STANLEY.	100L	For Lieutenant-Governor, ALBERT STANLEY.	100L	For Secretary of State, ROSS E. DAVIS.	100L	For Auditor of State, W. E. CLARK.	100L	For Treasurer of State, LEVI H. ROWELL.	100L	For Attorney-General, FORREST WALLACE.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L		
122	For Secretary of State, FREDERICK E. SCHORTE- MEIER.	100L	For Secretary of State, FREDERICK E. SCHORTE- MEIER.	100L	For Secretary of State, FREDERICK E. SCHORTE- MEIER.	100L	For Secretary of State, ROSS E. DAVIS.	L.T. PRO.	For Secretary of State, W. E. CLARK.	100L	For Secretary of State, W. E. CLARK.	100L	For Secretary of State, W. E. CLARK.	100L	For Auditor of State, W. E. CLARK.	100L	For Treasurer of State, LEVI H. ROWELL.	100L	For Attorney-General, FORREST WALLACE.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L				
123	For Auditor of State, LEWIS S. BOWMAN.	100L	For Auditor of State, LEWIS S. BOWMAN.	100L	For Auditor of State, LEWIS S. BOWMAN.	100L	For Auditor of State, W. E. CLARK.	L.T. PRO.	For Auditor of State, W. E. CLARK.	100L	For Auditor of State, W. E. CLARK.	100L	For Auditor of State, W. E. CLARK.	100L	For Treasurer of State, LEVI H. ROWELL.	100L	For Attorney-General, FORREST WALLACE.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L						
124	For Treasurer of State, BERNHARDT E. URBAENS.	100L	For Treasurer of State, BERNHARDT E. URBAENS.	100L	For Treasurer of State, BERNHARDT E. URBAENS.	100L	For Treasurer of State, LEVI H. ROWELL.	L.T. PRO.	For Treasurer of State, LEVI H. ROWELL.	100L	For Treasurer of State, LEVI H. ROWELL.	100L	For Treasurer of State, LEVI H. ROWELL.	100L	For Attorney-General, FORREST WALLACE.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L								
125	For Attorney-General, ARTHUR L. GILLIOM.	100L	For Attorney-General, ARTHUR L. GILLIOM.	100L	For Attorney-General, ARTHUR L. GILLIOM.	100L	For Attorney-General, FORREST WALLACE.	L.T. PRO.	For Attorney-General, FORREST WALLACE.	100L	For Attorney-General, FORREST WALLACE.	100L	For Attorney-General, FORREST WALLACE.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L										
126	For State Superintendent of Public Instruction, HENRY N. SHERWOOD.	100L	For State Superintendent of Public Instruction, HENRY N. SHERWOOD.	100L	For State Superintendent of Public Instruction, HENRY N. SHERWOOD.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	L.T. PRO.	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For State Superintendent of Public Instruction, WILLIAM O. BAILEY.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L												
127	For Judge Supreme Court, First District, BENJAMIN M. WILLOUGHBY.	100L	For Judge Supreme Court, First District, BENJAMIN M. WILLOUGHBY.	100L	For Judge Supreme Court, First District, BENJAMIN M. WILLOUGHBY.	100L	For Judge Supreme Court, First District.	L.T. PRO.	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, First District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L														
128	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Supreme Court, Fourth District, WILLARD B. GEMMILL.	100L	For Judge Supreme Court, Fourth District.	L.T. PRO.	For Judge Supreme Court, Fourth District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Supreme Court, Fourth District.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L																
129	For Judge Appellate Court, First Division, FRANCIS M. THOMPSON.	100L	For Judge Appellate Court, First Division, FRANCIS M. THOMPSON.	100L	For Judge Appellate Court, First Division, FRANCIS M. THOMPSON.	100L	For Judge Appellate Court, First Division.	L.T. PRO.	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, First Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L																		
130	For Judge Appellate Court, Second Division, ETHAN A. DAUSMAN.	100L	For Judge Appellate Court, Second Division, ETHAN A. DAUSMAN.	100L	For Judge Appellate Court, Second Division, ETHAN A. DAUSMAN.	100L	For Judge Appellate Court, Second Division.	L.T. PRO.	For Judge Appellate Court, Second Division.	100L	For Judge Appellate Court, Second Division.	100L	For Judge Appellate Court, Second Division.	100L	For Reporter of Supreme Court.	100L																				
131	For Reporter of Supreme Court, EMMA EATON WHITE.	100L	For Reporter of Supreme Court, EMMA EATON WHITE.	100L	For Reporter of Supreme Court, EMMA EATON WHITE.	100L	For Reporter of Supreme Court, EMMA EATON WHITE.	L.T. PRO.	For Reporter of Supreme Court.	100L																										

SPECIMEN BALLOT

for

BOSTON

Ward 26

Precinct 4

The Commonwealth

List of Candidates nominated, to

SPECIMEN

Penalty for wilfully defacing, tearing
of Candidates or Specimen Ballot—fineTo vote for Electors of One Party, mark a Cross X in the Square at the right of the Party Name.
ELECTORS OF PRESIDENT AND VICE PRESIDENT. Vote ONCETo vote for a Person, mark a
the right of the Party Name, or

COOLIDGE and DAWES ~~~~~ Republican

George A. Bacon of Lynn	8. William W. Davis of Cambridge
Hester S. Fearing of Boston	9. Emma Fall Schofield of Malden
1. Arthur S. Gayford of Haverhill	10. Frank Gardner Hall of Boston
2. Charles S. Warner of Haverhill	11. Francis R. Bangs of Boston
3. Telephone Laborer of Woburn	12. Ida E. Hibbard of Boston
4. Frank Roe Butcherider of Worcester	13. Henry F. Beal of Waltham
5. Edith Mearse Rogers of Lowell	14. Harry H. Williams of Brockton
6. Gayden W. Morrill of Newburyport	15. Charles C. Cain, Jr. of Taunton
7. Effie S. Atwell of Lynn	16. Melvina L. Keith of Boston

DAVIS and BRYAN ~~~~~ Democratic

William A. Easton of Boston	8. Edward W. Quinn of Cambridge
John F. Fitzgerald of Boston	9. John J. Murphy of Somerville
1. Joseph B. City of Weymouth	10. Charles H. Cole of Boston
2. Anne O'Keefe Nefferman of Weymouth	11. Andrew J. Peters of Boston
3. Marcus A. Coolidge of Fitchburg	12. James A. Gollison of Boston
4. Peter F. Sullivan of Worcester	13. Arthur Lyman of Waltham
5. Humphrey O'Sullivan of Lowell	14. Charles F. Richardson of Sharon
6. Charles L. Pettigall of Amesbury	15. Edmund P. Talbot of Fall River
7. Gertrude E. McGhee of Lynn	16. Hannah Ashley of New Bedford

FOSTER and GITLOW ~~~~~ Workers Party

George Kraska of Weymouth	8. John Louder of Haverd
Michael M. Ploppis of Boston	9. Wm. Scitola of Weymouth
1. Robert Zeldes of Boston	10. Samuel D. Levine of Boston
2. Charles Hedrich of Boston	11. Eva Hoffman of Boston
3. Hyman Levine of Brockton	12. Israel I. Horvitz of Boston
4. William Martindale of Worcester	13. Sarah R. Balkam of Boston
5. Lewis Marks of Boston	14. Emma P. Hutchins of Boston
6. Emil Saari of Haverd	15. E. J. Scitola of Fitchburg
7. Louis F. Weiss, Sr. of Worcester	16. William Jacobson of Cambridge

JOHNS and REYNOLDS ~~~~~ Socialist
Labor Party

Henry C. Hess of Boston	8. Peter O'Hara of Medford
Samuel Ferguson of Everett	9. Daniel T. Blessington of Somerville
1. Herman Koepke of Fitchburg	10. James A. Carmichael of Boston
2. Oskar Kinsalis of Springfield	11. Albert L. Waterman of Boston
3. Bernel E. Wheeler of Weymouth	12. Morris Becker of Boston
4. Joseph Liska of Medford	13. Alex Brady of Waltham
5. John McElmoo of Lowell	14. Patrick H. Loftus of Roxbury
6. Thomas Brennan of Salem	15. Gden Johnson of Attleboro
7. Lois I. Galt of Lynn	16. James Hayes of Plymouth

LA FOLLETTE and WHEELER ~~~~~ Independent-
Progressive

Alice Stone Blackwell of Boston	8. Elizabeth R. Day of Cambridge
George H. Wagon of Springfield	9. Clarence R. Skinner of Medford
1. Albert Sprague Coolidge of Fitchburg	10. Thomas A. Noland of Boston
2. Walter J. Kenefick of Springfield	11. Thomas M. Nolan of Boston
3. Adenbert L. Leeman of Taunton	12. Joseph P. Tyrant of Boston
4. Daniel R. Donovan of Worcester	13. Florence H. Luscumb of Boston
5. Maude Wheeler Mitchell of Hingham	14. Robert H. O. Scholz of Duxbury
6. Parkman B. Flanders of Haverd	15. George Clark of Taunton
7. Michael S. Noonan of Lynn	16. Abraham Blum of New Bedford

Voters inserting names must mark a cross X against each one

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16.	

GOVERNOR

JOHN J. BALLAM of BOSTON

JAMES M. CURLEY of BOSTON

ALVAN T. FULLER of MALDEN

JAMES HAYES of PLYMOUTH

WALTER S. HUTCHINS of GREENY

LIEUTENANT GOVERNOR

FRANK G. ALLEN of NORWOOD

JOHN J. CUMMINGS of BOSTON

ARTHUR A. CUNNING of BOSTON

THOMAS NICHOLSON of LAWRENCE

EDWARD RAND STEVENS of BOST

SECRETARY

FREDERIC W. COOK of SOMERVILL

WINFIELD A. DWYER of BOSTON

SAMUEL LEBER of BOSTON

H. OSCAR ROCHELLEAU of WOBURN

EDITH WILLIAMS of BROOKLINE

TREASURER

MICHAEL L. EISNER of PITTSFIELD

PATRICK H. LOFTUS of ARINGTON

LOUIS MARCUS of BOSTON

ALBERT ODDIE of BROCKTON

WILLIAM S. YOUNGMAN of BOST

AUDITOR

STRABO V. CLAGGETT of NEWTON

ALONZO B. COOK of BOSTON

JAMES J. LACEY of BOSTON

DENNIS F. REAGAN of BROCKTON

ATTORNEY GENERAL

JAY R. BENTON of BELMONT

HARRY J. CANTER of BOSTON

FREDERICK DELCHER of PEABODY

JOHN WEAVER SHERMAN of BOX

JOHN E. SWIFT of MILFORD

SENATOR IN CONGRESS

FREDERICK H. BILLET of SPRIN

ANTOINETTE F. KONIKOW of BO

DAVID I. WALSH of FITCHBURG

of Massachusetts.

be voted for November 4, 1924

BALLOT

down, removing or destroying a List
not exceeding One Hundred Dollars

was X in the Square at
Political Designation. X

Vote for ONE
WORKERS PARTY
DEMOCRATIC
REPUBLICAN
SOCIALIST LABOR PARTY
SOCIALIST PARTY

Vote for ONE
REPUBLICAN
DEMOCRATIC
SOCIALIST LABOR PARTY
SOCIALIST PARTY
WORKERS PARTY

Vote for ONE
REPUBLICAN
WORKERS PARTY
SOCIALIST LABOR PARTY
DEMOCRATIC
SOCIALIST PARTY

Vote for ONE
DEMOCRATIC
SOCIALIST LABOR PARTY
SOCIALIST PARTY
WORKERS PARTY
REPUBLICAN

Vote for ONE
DEMOCRATIC
REPUBLICAN
SOCIALIST LABOR PARTY
WORKERS PARTY
SOCIALIST PARTY

Vote for ONE
REPUBLICAN
WORKERS PARTY
SOCIALIST LABOR PARTY
SOCIALIST PARTY
DEMOCRATIC

Vote for ONE
REPUBLICAN
WORKERS PARTY
DEMOCRATIC

To vote for a Person, mark a Cross X in the Square at
the right of the Party Name, or Political Designation. X

CONGRESSMAN—Thirteenth District Vote for ONE
ROBERT LUCE of WALTHAM REPUBLICAN
EDWIN F. TUTTLE of BELLINGHAM DEMOCRATIC

COUNCILLOR—Second District Vote for ONE
WASHINGTON COOK of SHARON REPUBLICAN
OTTO L. SCHOFIELD of WELLESLEY DEMOCRATIC

SENATOR—North and South Districts Vote for ONE
ERLAND F. FISH of BROOKLINE REPUBLICAN
JAMES P. McNAMARA of BOSTON DEMOCRATIC

REPRESENTATIVE IN GENERAL COURT Vote for ONE
JOHN B. ANGUS, Jr. of BOSTON REPUBLICAN
LEO M. BIRMINGHAM of BOSTON DEMOCRATIC

REGISTER OF PROBATE AND INSOLVENCY
Salem County Vote for ONE
FRANK L. BRIER of BOSTON REPUBLICAN
ARTHUR W. SULLIVAN of BOSTON DEMOCRATIC

COMMISSIONERS TO APPOINT SUFFOLK COUNTY
Second District Vote for ONE
WALTER C. ABBOTT of BOSTON REPUBLICAN
HENRY Z. KELLY of BOSTON DEMOCRATIC

Frederic W. Cook
Secretary of the Commonwealth

To vote on the following, mark a Cross X in the Square
at the right of Yes or No on each question.

REFERENDUM QUESTION NO. 1.—Amendment to Constitution
Shall an amendment to the constitution relative to the qualifications
of voters for certain state officers (striking out the word "male"), which
received in a joint session of the two Houses held May 24, 1921, 256 votes in the affirmative and none in the
negative, and at a joint session of the two Houses
held May 10, 1923, received 254 votes in the affirmative
and none in the negative, be approved? Yes No

REFERENDUM QUESTION NO. 2.—Amendment to Constitution
Shall an amendment to the constitution to enable women to hold any
state, county or municipal office, and which further provides that a change
of name of any woman, holding a Notary Public Commission, shall not
render her commission void but she shall re-register under her new name
and shall pay such fee therefor as shall be established by the general court,
which received in a joint session of the two Houses
held May 24, 1921, 216 votes in the affirmative and
none in the negative, and at a joint session of the
two Houses held May 10, 1923, received 252 votes in the
affirmative and none in the negative, be approved? Yes No

REFERENDUM QUESTION NO. 3
Shall a law (Chapter 270 of the Acts of 1922) which provides that no
person shall manufacture, transport by aircraft, watercraft or vehicle,
import or export spirituous or intoxicating liquor, as defined by section 3
of chapter 138 of the General Laws, or certain non-intoxicating beverages,
as defined by section 1 of said chapter 138, unless in each instance he shall
have obtained the permit or other authority required therefor by the laws of the United States and the regulations made
thereunder, which law was approved by both branches
of the General Court by votes not recorded, and was
approved by His Excellency the Governor, be approved? Yes No

REFERENDUM QUESTION NO. 4
Shall a law (Chapter 454 of the Acts of 1922) which provides for the
means of funds from the license tax on motor vehicles, and the maintenance of
highways by means of an excise tax of two cents on each gallon of gasoline
and other fuel used for propelling motor vehicles on the highways of the
Commonwealth, said tax to be paid by the purchaser of the gasoline, who, in turn, pays it to the Commonwealth, and the money to be credited
to a fund to be known as the gasoline-highway fund, out of which reim-
bursement is to be made to purchasers, who shall consume the gasoline or
other fuel in any manner except in the operation of motor vehicles on the
highways, and the expense of carrying out the act are to be paid, fifty
per cent of the balance of said fund to be distributed to the cities and towns
of the Commonwealth, in proportion to the amount which they contribute
to the State tax, and the fifty per cent to be expended in construction or
improvement of public ways within the city or town limits, and the other
fifty per cent to be expended by the State Department
of Public Works on such highways as it may select
which law was approved by both branches of the
General Court by votes not recorded, and was ap-
proved by His Excellency the Governor, be approved? Yes No

REFERENDUM QUESTION NO. 5
Shall a law (Chapter 475 of the Acts of 1922) which amends existing
legislation on the same subject and provides that, subject to certain limi-
tations, no person shall engage or be financially interested in the business
of receiving deposits of money for safe-keeping or for the purpose of trans-
ferring the same or equivalents thereof to foreign countries unless he has
executed and delivered a bond to the State Treasurer, or deposited securities
in lieu thereof, and has received a license from the Commissioner
of Banks authorizing him to carry on such business, that any money which
in case of breach of bond shall be paid by the licensee or surety thereon, or
the securities deposited in lieu thereof, shall constitute a trust fund for the
benefits of depositors, that the license shall be revocable by the Commis-
sioner of Banks for cause shown, that the money deposited with licensees
for safe-keeping shall be invested in the manner prescribed by the act, and
that the violation of any provision of the act shall be
punished in the manner therein prescribed, which law
was approved by both branches of the General Court
by votes not recorded, and was approved by His Excel-
lency the Governor, be approved? Yes No

REFERENDUM QUESTION NO. 6
"Shall daylight saving be retained by law in Mas-
sachusetts?" Yes No

REFERENDUM QUESTION NO. 7
Is it desirable that the general court ratify the following proposed
amendment to the constitution of the United States.—"Section 1. The
Congress shall have power to limit, regulate, and prohibit the export of
persons under eighteen years of age. Section 2. The power
of the several States is unimpaired by this article except
that the operation of State laws shall be suspended to the
extent necessary to give effect to legislation enacted by
the Congress." Yes No

To vote on the following, mark a Cross X in the square at the
right of EITHER PLAN NO. 1 OR PLAN NO. 2.
Plan No. 1. A city council to consist of members to consist of three
members to be elected for two year terms by and from the rank of each
of five boroughs (each comprising certain specified wards) at a salary of
fifteen hundred dollars each, nominated as heretofore,
except that the names of five hundred voters only shall
be required to nominate each member.
Plan No. 2. A city council to consist of one member to be elected for a
two year term by and from the voters of each ward at a salary of fifteen
hundred dollars each, nominated as heretofore, except that
the names of one hundred voters only shall be required
to nominate each member.

No 3807

SAMPLE BALLOT

MARK CROSSES (X) ON BALLOT ONLY WITH RUBBER STAMP; NEVER WITH PEN OR PENCIL.

(Fold Ballot to this Perforated Line, leaving Top Margin exposed)

GENERAL TICKET—8th CONGRESSIONAL, 11th SENATORIAL, 42nd ASSEMBLY DISTRICT

INSTRUCTIONS TO VOTERS:

To vote for a candidate of your selection, stamp a cross (X) in the voting square next to the right of the name of such candidate, where two or more candidates for the same office are to be elected, stamp a cross (X) after the names of all the candidates for that office for whom you desire to vote, not to exceed, however, the number of candidates who are to be elected. To vote for all or a group of persons, stamp a cross (X) in the square opposite such group. To vote for a person not on the ballot, write the name of such person under the title of the office in the blank space left for that purpose. To vote on any question, proposition or constitutional amendment, stamp a cross (X) in the voting square after the word "yes" or after the word "No." All marks except the cross (X) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly stamp, tear or deface this ballot, return it to the inspector of election and obtain another.

INSTRUCTIONS TO VOTERS:

[illegible]

RECALL BALLOT

If you ARE in favor of the recall of
 WILLIAM C. HENDEE
 mark an X in the square opposite the
 word "Yes." If you are NOT in
 favor of his recall mark an X in the
 square opposite the word "No."

☒ YES
☐ NO

If you ARE in favor of the recall of
 OLIVER BRIGHT
 mark an X in the square opposite the
 word "Yes." If you are NOT in
 favor of his recall mark an X in the
 square opposite the word "No."

☒ YES
☐ NO

Nominees for successors of
 FRANK E. SMITH, Resigned
 Vote for one only.

Mark an X in the square opposite
 the name of the candidate for whom
 you desire to vote:

☐ WILLIAM R. PINKER
☒ ALFRED TAYLOR
☐ FRANK S. WEISLEY

Nominees for successors of
 WILLIAM C. HENDEE

Vote for one only.

Mark an X in the square opposite
 the name of the candidate for whom
 you desire to vote:

☐ FRANK E. SMITH
☒ W. COURTRIGHT SMITH
☐ E. YENNEY

Nominees for successors of
 OLIVER BRIGHT

Vote for one only.

Mark an X in the square opposite
 the name of the candidate for whom
 you desire to vote:

☒ RALPH L. CARLL
☐

56. The Ohio Provision for Municipal Home Rule

The Ohio constitution of 1851 contained a provision prohibiting special legislation for municipal corporations. The legislature, however, resorted to the device of classifying cities by size and passing laws which would be applicable only to cities of a certain population. This practice was upheld by the courts, and soon the constitutional requirement of "general laws" was so completely circumvented by this subterfuge that it became little short of ridiculous. By 1898 the cities had been classed into eleven distinct grades, as is shown by the following table:¹

Class I.

- Grade 1. Over 200,000 inhabitants (Cincinnati).
- Grade 2. From 90,000 to 200,000 inhabitants (Cleveland).
- Grade 3. From 31,500 to 90,000 inhabitants (Toledo).
- Grade 4. Those promoted from Class II (None).

Class II.

- Grade 1. From 30,500 to 31,500 inhabitants (Columbus).
- Grade 2. From 20,000 to 30,500 inhabitants (Dayton).
- Grade 3. From 10,000 to 20,000 inhabitants (Youngstown).
- Grade 3a. From 28,000 to 33,000 inhabitants (Springfield).
- Grade 3b. From 16,000 to 18,000 inhabitants (Hamilton).
- Grade 4. From 5,000 to 10,000 inhabitants (four cities).
- Grade 4a. From 8,330 to 9,050 inhabitants (Ashtabula).

This circumvention became so obvious an abuse that in 1902 the Supreme Court of Ohio reversed its earlier decisions and held that classifications of this nature were void.² The decision practically swept away the entire legal foundation of the city governments, and the court suspended the execution of its decision until the legislature could be

¹ From the "Report of the Municipal Home Rule Committee of the Municipal Association of Cleveland, 1912," quoted in C. C. Maxey, *Readings in Municipal Government* (Garden City, 1924), 22.

² *State v. Jones*, 66 Ohio St. (1902) 453.

hastily convened. For nearly three months the General Assembly labored with the various proposals presented to it, but in the end it passed a uniform charter law applicable to every city in the state with more than 5,000 inhabitants.

The disadvantages of this plan were also obvious, and the constitutional convention of 1912 recommended the approval of the following amendment to the constitution giving the cities complete home rule. The amendment was ratified on September 3, 1912, by a vote of 301,861 to 215,120 and went into effect on November 15 following. Within two years practically all of the larger cities attempted to exercise the home-rule powers granted and nine new charters were adopted. Under this provision, too, a number of important municipalities have adopted the manager form of government.

SOURCE—*The Constitution of the State of Ohio, as in force and effect January 1, 1922* (Columbus, 1922), 43-46; *Journal of the Constitutional Convention of the State of Ohio, 1912* (Columbus, 1912), 1069-1073; *Proceedings and Debates of the Constitutional Convention of the State of Ohio, 1912* (Columbus, 1913), II, 2138-2140; Throckmorton, A. H. (ed.) *General Code of the State of Ohio* (Cleveland, 1921), xliii-xliv; Page, W. H. and Adams, J. J., *Annotated General Code of the State of Ohio, 1910* (Cincinnati, 1912), VII, 475-489.

ARTICLE XVIII.

....

SEC. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SEC. 4. Any municipality may acquire, construct, own, lease

and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. . . .

SEC. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SEC. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SEC. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty days nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a

charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SEC. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

...

SEC. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SEC. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

57. The Massachusetts Optional Charter Law

Until the enactment of the optional charter law in Massachusetts, the cities of that state were granted charters by special acts of the legislature. This led to a large number of serious abuses. The legislature was not always fully aware of the governmental needs of a particular municipality and would frequently foist upon it a form of government which it did not desire. As time passed, it became necessary to secure additional powers to meet the new needs which additional population demanded. Any change in the form of government or in the powers of a city could be made only by a special act of the General Court; and as a consequence hardly a session of the legislature passed during which various cities did not have to maintain lobbies at Boston to secure the privileges they felt necessary to their welfare.

In the hope that this situation might be relieved, the legislature passed, in 1915, the following optional charter law providing for four types of city charters. This law gives a city a considerable range of choice in adopting a form of government. It cannot be said, however, that the optional charter system has proved the panacea that many expected it to be. Most of the cities feel that its provisions are too rigid and prefer to retain their earlier individual charters, even though these may not be entirely suited to their present situation. The Massachusetts optional charter provisions show the general form which this type of law usually takes, and they contain an excellent statement of the principles underlying the chief forms of municipal government now in use in the United States.

SOURCE—*General Acts passed by the General Court of Massachusetts, 1915* (Boston, 1915), chap. 267, pp. 290-315; *General Laws of the Commonwealth of Massachusetts* (Boston, 1920), I, 340-358.

PART I.

SECTION 2. Any city, except Boston, which shall adopt, in the manner hereinafter prescribed, one of the plans of government provided in this act, shall thereafter be governed by the provisions thereof; and the inhabitants of such city shall continue to be a municipal corporation under the name existing at the time of such adoption, and shall have, exercise and enjoy all of the rights, immunities, powers and privileges, and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise pertaining to or incumbent upon the said city as a municipal corporation.

SECTION 3. None of the legislative powers of a city shall be abridged or impaired by the provisions of this act, but all such legislative powers shall be possessed and exercised by such body as shall be the legislative body of the city under the provisions of this act. . . .

SECTION 10. The question of the adoption of not more than one plan may be submitted at an election. If, pending the determination of the question or questions proposed by petition already filed, another petition presenting the question of the adoption of a different plan shall be presented for filing with the city clerk, no action shall be taken upon the later petition, except to file it, until after the submission to a vote of the question or questions proposed by the earlier petition. . . .

SECTION 11. If a majority of the total number of votes cast at a regular state election for and against the adoption of one of the plans of government provided for in this act shall be in favor of its adoption, the provisions of this act, so far as applicable to the form of government under the plan adopted by the city, shall supersede the provisions of its charter and of the general and special laws relating thereto and inconsistent herewith, but not, however, until officers provided for under such plan shall have been duly elected and their terms of office shall have begun. The officers provided for under the plan so adopted shall be elected in accordance with the provisions of this act relating to such plan and in accordance with the provisions of section fifteen of this part, and their terms of office shall begin at ten o'clock in the forenoon of the first Monday of January following their election. . . .

PART II.

PLAN A.

GOVERNMENT BY MAYOR AND CITY COUNCIL ELECTED AT LARGE.

....

SECTION 3. There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from the first Monday of January following his election, and until his successor is elected and qualified.

SECTION 4. No ballot used at any annual or special or city election shall have printed thereon any party or political designation or mark, and there shall not be appended to the name of any candidate any such party or political designation or mark, or anything showing how he was nominated or indicating his views or opinions.

SECTION 5. The legislative powers of the city shall be vested in a city council, which shall consist of nine persons, elected at large by and from the qualified voters of the city. One of its members shall be elected by the council annually as its president. At the first election held in a city after its adoption of Plan A, the five candidates receiving the largest number of votes shall hold office for two years, and the four receiving the next largest number of votes shall hold office for one year. Thereafter, as these terms expire, there shall be elected at each annual city election a sufficient number of members to fill the vacancies created by the expiration of said terms, each of the members so elected to serve for a term of two years.

SECTION 6. The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding five thousand dollars a year, and he shall receive no other compensation from the city. His salary shall not be increased or diminished during the term for which he is elected. The council may, by a two thirds vote of all its members taken by call of the yeas and nays, establish a salary for its members not exceeding five hundred dollars each a year. Such salary may be reduced, but no increase therein shall be made to take effect during the year in which the increase is voted.

SECTION 7. All heads of departments and members of municipal boards, as their present terms of office expire, but excluding the school committee, officials appointed by the governor, and assessors where they are elected by vote of the people, shall be appointed by the mayor without confirmation by the city council.

SECTION 8. In making his appointments the mayor shall sign and file with the city clerk a certificate in the following form:—

CERTIFICATE OF APPOINTMENT.

I appoint (name of appointee) to the position of (name of office), and I certify that in my opinion he is a recognized expert in the work which will devolve upon him, and that I make the appointment solely in the interest of the city.

Mayor.

or in the following form, as the case may be:—

CERTIFICATE OF APPOINTMENT.

I appoint (name of appointee) to the position of (name of office), and I certify that in my opinion he is a person specially fitted by education, training, or experience to perform the duties of said office, and that I make the appointment solely in the interest of the city.

Mayor.

SECTION 9. The mayor may remove any head of a department or member of a board by filing a written statement with the city clerk setting forth in detail the specific reasons for such removal, a copy of which shall be delivered or mailed to the person thus removed, who may make a reply in writing, which, if he desires, may be filed with the city clerk; but such reply shall not affect the action taken unless the mayor so determines. The provisions of this section shall not apply to the school committee, nor to officials appointed by the governor, nor to assessors where they are elected by vote of the people.

SECTION 10. Every order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it he shall sign it; if he disapproves it he shall return it, with his objections in writing, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor,

shall again pass such order, ordinance, resolution or vote by a two-thirds vote of all the members of the city council, it shall then be in force, but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution and vote shall be in force if it is not returned by the mayor within ten days after it has been presented to him. . . .

PART III.

PLAN B.

GOVERNMENT BY MAYOR AND COUNCIL ELECTED BY DISTRICTS AND AT LARGE.

SECTION 3. There shall be a mayor, elected by and from the qualified voters of the city, who shall be the chief executive officer of the city. He shall hold office for the term of two years from the first Monday in January following his election and until his successor is elected and qualified.

SECTION 4. The legislative powers of the city shall be vested in a city council. One of its members shall be elected by the council annually as its president. In cities having more than seven wards, the city council shall be composed of fifteen members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city. In cities having seven wards or less, the city council shall be composed of eleven members, of whom one shall be elected from each ward by and from the qualified voters of that ward, and the remaining members shall be elected by and from the qualified voters of the city.

At the first election held in a city after its adoption of Plan B, the councillors elected from each ward shall be elected to serve for one year, and those elected at large shall be elected to serve for two years, from the first Monday in January following their election and until their successors are elected and qualified; and at each annual city election thereafter the councillors elected to fill vacancies caused by the expiration of the terms of councillors shall be elected to serve for two years.

SECTION 5. All heads of departments and members of municipal boards, as their present terms of office expire, but excluding the school committee, officials appointed by the governor, and

assessors where they are elected by vote of the people, shall be appointed by the mayor, subject to confirmation by the city council; but the city solicitor shall be appointed by the mayor, without confirmation by the city council.

SECTION 6. The mayor may, with the approval of a majority of the members of the city council, remove any head of a department or member of a board before the expiration of his term of office, except members of the school committee, officials appointed by the governor, and assessors where they are elected by vote of the people. The person so removed shall receive a copy of the reasons for his removal, and he may, if he desires, contest the same before the city council. He shall have the right to be represented by counsel at such hearing. . . .

PART IV.

PLAN C.

COMMISSION FORM OF GOVERNMENT.

. . . .
SECTION 2. The government of the city and the general management and control of all of its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner hereinafter set forth; except, however, that the general management and control of the public schools of the city and of the property pertaining thereto shall be vested in the school committee.

SECTION 3. The city council shall consist of five members, to wit:—a mayor, who shall be the commissioner of administration; a commissioner of finance; a commissioner of health; a commissioner of public works and a commissioner of public property. Each of these commissioners shall have charge of the department of city affairs indicated by his official title, except as to the affairs and property of the city which are within the jurisdiction of the school committee. All of these officers shall be elected at large by and from the qualified voters of the whole city for terms of two years, except as is hereinafter provided.

In case of a difference of opinion as to the departments to be in charge of any one or more of the commissioners, the matter shall be determined by a vote of a majority of the commissioners.

SECTION 4. The terms of office of the members of the council shall commence at ten o'clock in the forenoon of the first Monday in January following their election and shall be for two years each, and until their successors are elected and qualified: *provided, however,* that the terms of office of the commissioner of administration, the commissioner of finance and the commissioner of health first so elected shall be for the term of two years, and the terms of office of the commissioner of public works and the commissioner of public property first so elected shall be for the term of one year, and thereafter the commissioners elected at each annual city election to fill the vacancies caused by the expiration of the terms of commissioners shall be elected to serve for two years.

SECTION 5. The city council elected as aforesaid shall meet at ten o'clock in the forenoon on the first Monday of January in each year, and the members of the city council whose terms of office then begin shall severally make oath, before the city clerk or a justice of the peace, to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice of a president, who shall hold his office during the pleasure of the city council. The president of the city council shall be some member thereof other than the mayor. . . .

SECTION 8. The city council shall have and exercise all the legislative powers of the city, except as such powers are herein and in Part I reserved to the school committee and to the qualified voters of the city; and the city council and its members shall, severally or collectively, have and possess, and shall themselves or through such officers as they may elect or appoint, exercise all the other powers, rights and duties had, possessed or exercised, immediately prior to the adoption of this act, by the mayor, board of aldermen, common council, and all other boards, commissions and committees of the city and their members, severally or collectively, except such as are in Part I conferred upon the school committee or are otherwise provided for in this part. . . .

SECTION 10. The mayor shall be the chief executive officer of the city, commissioner of administration and, ex officio, chairman of the school committee. He shall preside at all meetings of the city council and of the school committee at which he is present. He shall also, when present, preside at all joint conventions of the city council and of the school committee.

He shall have the right to vote on all questions coming before the city council, but shall have no power of veto.

He shall have such other duties, rights and powers as may be provided by ordinance, not in conflict with this act. . . .

SECTION 11. All executive and administrative powers, authorities and duties, not otherwise provided for in this act, shall be assigned to a suitable department by the city council by ordinance, and changes in the assignments made in this manner may be made by ordinance by the affirmative vote of three members of the city council, or by the qualified voters of the city upon initiative petition.

The city council shall determine the policies to be pursued and the work to be undertaken in each department, but each commissioner shall have full power to carry out the policies or to have the work performed in his department as directed by the city council.

SECTION 12. Each commissioner may, except as is otherwise provided herein, appoint a qualified person to serve as the head of each of the departments under his charge and may remove him at any time for cause stated in the order of removal. All appointments and removals so made shall be subject to confirmation by the city council. The employees in each department shall be appointed and removed by the head of that department. Nothing in this section shall in any way affect the laws governing the civil service. . . .

PART V.

PLAN D.

MAYOR, CITY COUNCIL AND CITY MANAGER.

. . . .

SECTION 3. The government of the city and the general management and control of all its affairs shall be vested in a city council. . . .

SECTION 4. The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified; except that at the first election the three candidates having the highest number of votes shall serve for two years and the two candidates having the next highest number of votes shall serve for one year.

SECTION 5. All the legislative powers of the city shall be vested in the city council. The city council elected as aforesaid

shall meet at ten o'clock in the forenoon on the first Monday of January in each year, and the members of the city council whose terms of office then begin shall severally make oath before the city clerk, or a justice of the peace, to perform faithfully the duties of their respective offices. The city council shall thereupon be organized by the choice of a president, who shall hold his office during the pleasure of the city council. The president of the city council shall be some member thereof other than the mayor. . . .

SECTION 8. Vacancies in the city council shall be filled by the council for the remainder of the unexpired term.

SECTION 9. The mayor shall be that member of the city council who, at the regular municipal election at which the three members of the council were elected, received the highest number of votes, except that at the first regular municipal election held in a city adopting this plan of government the mayor shall be the councillor receiving the highest number of votes. In case two councillors receive the same number of votes, one of them shall be chosen mayor by the remaining members of the council. In case of a vacancy in the office of mayor, the remaining members of the council shall choose from their own number his successor for the unexpired term. The mayor shall be the presiding officer, except that in his absence the president of the council shall preside; and in the absence of both the mayor and the president of the council, a president pro tempore may be chosen. The mayor shall be the official head of the city. He shall have no power of veto, but shall have the same power as the other members of the council to vote upon all measures coming before it. . . .

SECTION 11. The city council shall appoint a city manager, who shall be the administrative head of the city government and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council and shall receive such compensation as it shall fix by ordinance.

SECTION 12. The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the

city's financial condition and its future financial needs; (5) appoint and remove all heads of departments, superintendents and other employees of the city.

SECTION 13. Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any other officer or employee may be removed by him; but the city manager shall report every such appointment and removal to the council at the next meeting thereof following any such appointment or removal.

SECTION 14. The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council.

Approved May 20, 1915.

58. A City Manager Charter

The charter of Berkeley was drafted by a board of fifteen freeholders under the home-rule provisions of the California constitution. This body was elected on November 21, 1908, and the document which it framed was ratified at a special municipal election during the following January. Formal approval of the legislature was given the new charter by an act of March 4, 1909.

Technically, this document is still the organic law of the city of Berkeley, although the form of government prescribed has been greatly changed by subsequent amendments. Perhaps the most important of these amendments were those approved January 20, 1923, providing for the manager form of government. By 1923 the manager plan was no longer in the experimental stage of its development, and it was possible for Berkeley to take advantage of the experience of other cities. In many respects the amended charter is typical of the more advanced and liberal provisions for this type of municipal government.

The full charter, as amended, is a very lengthy document, filling a booklet of more than eighty pages. Obviously, the complete document cannot be reprinted here. The extracts which are given have been selected to show the general form of the charter, the special provisions ap-

plying to the manager type of government, and the general organization and powers of the city and its officials.

SOURCE—*Charter of the City of Berkeley* [as amended to 1923] (Berkeley, 1923), 5-78.

CHARTER

OF THE

CITY OF BERKELEY

ARTICLE I.

NAME AND RIGHTS OF THE CITY

Sec. 1. The municipal corporation now existing and known as the Town of Berkeley shall remain and continue a body politic and corporate in name and in fact, by the name of the City of Berkeley, and by such name shall have perpetual succession. . . .

ARTICLE II.

BOUNDARIES

Sec. 3. The boundaries of the City of Berkeley shall be as follows: . . .

ARTICLE III.

ELECTIONS

Sec. 4. A municipal election shall be held on the first Tuesday in May, 1923, and biennially thereafter. All such elections shall be known as regular municipal elections. All other municipal elections that may be held shall be known as special municipal elections.

Sec. 5. (1) All elective officers shall be elected by the preferential system. . . .

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five individual certificates. . . .

ARTICLE IV.

RECALL OF ELECTIVE OFFICERS

Sec. 7. (1) Every incumbent of an elective office, whether elected by popular vote or appointed to fill a vacancy, is subject to recall by the voters of the city. The procedure to effect such removal from office shall be as follows:

(2) A petition signed by qualified electors equal in number to twenty per centum of the entire vote cast for Mayor at the last preceding general municipal election at which a Mayor was elected, demanding an election of a successor of the officer sought to be removed, shall be addressed to the Council and presented to the City Clerk. The petition may request such election to be held at a special municipal election or at the next general municipal election. The petition must contain a statement of the reasons for the demand. . . .

(4) If the officer sought to be removed shall not resign within five days after the petition is filed by the City Clerk, and if the petition requests a special election, the Council shall cause a special election to be held within forty-five days to determine whether the people will recall said officer, or, if a general municipal election is to occur within sixty days, the Council may in its discretion postpone the holding of such election to such general municipal election.

(5) In the published call for the election there shall be printed in not more than two hundred words the reasons for demanding the recall of the officer as set forth in the Recall petition, and in not more than two hundred words the officer may justify his course in office.

(6) The officer sought to be removed shall be deemed a candidate and, unless he resigns, his name shall be printed on the ballot. The nomination of other candidates and the election shall be in accordance with the provisions of Section 5.

(7) The officer sought to be removed, shall, if he do not resign, continue to perform the duties of his office until the election, and, if he fail of election, he shall be deemed removed from office.

(8) No recall petition shall be filed against any officer until he has actually held his office for at least three months.

(9) No person who has been recalled from an elective office, or who has resigned from such office while recall proceedings were

pending against him, shall be appointed to any office within one year after such recall or resignation. . . .

ARTICLE V.

ELECTIVE OFFICERS

Sec. 8. The elective officers of the City shall be a Mayor, an Auditor, eight Councilmen and four School Directors.

The Council shall consist of the Mayor and eight Councilmen, each of whom, including the Mayor, shall have the right to vote on all questions coming before the Council. . . .

Sec. 9. The Mayor, Auditor, Councilmen and School Directors shall be elected at the general municipal election on a general ticket from the City at large.

Sec. 10. To be eligible for the office of Mayor, Auditor or Councilman, a person must be a citizen of the United States and qualified elector of the State of California and of the City of Berkeley. . . .

Sec. 14. The Mayor and Auditor shall each hold office for a term of four years from and after the first day of July after his election and until his successor is elected and qualified.

Sec. 15. The Councilmen shall hold office for a term of four years from and after the first day of July after their election and until their successors are elected and qualified. Provided, that the Councilmen first elected after the adoption of this amendment shall, at their first meeting, so classify themselves by lot that four of them shall hold office for two years and four of them for four years.

At each general municipal election after the first election held after the adoption of this amendment, there shall be elected four Councilmen. . . .

Sec. 19. The Councilmen shall each receive a fee of five dollars for each meeting of the Council which he shall attend; and the Mayor shall receive a fee of ten dollars for each meeting of the Council which he shall attend provided, that neither a Councilman nor the Mayor shall receive such fees for more than four meetings in any one calendar month.

The Auditor shall receive an annual salary of \$3,000, payable in equal monthly installments. . . .

ARTICLE VI.

THE MAYOR

Sec. 21. The Mayor shall be the chairman of the Council, and shall preside at the meetings of the Council and perform such other duties consistent with his office as may be imposed by the Council. He shall be entitled to a vote on all matters coming before the Council, but shall possess no veto power. He shall be recognized as the official head of the City for all ceremonial purposes, by the courts for the purposes of serving civil processes, and by the Governor for military purposes. He may use the title of Mayor in any case in which the execution of contracts or other legal instruments in writing, or other necessity arising from the general laws of this State, may so require; but this shall not be construed as conferring upon him administrative or judicial functions or other powers or functions of a Mayor, under the general laws of the State. The powers and duties of the Mayor shall be such as are conferred upon him by this amendment, together with such others as may be conferred by the Council in the pursuance of the provisions of this amendment, and no others.

Sec. 22. During the temporary absence or disability of the Mayor, the Vice-President of the Council shall act as Mayor pro tempore. In case of the temporary absence or disability of both the Mayor and Vice-President the Council shall elect one of its members to be Mayor pro tempore. . . .

ARTICLE VII.

EXECUTIVE AND ADMINISTRATIVE DEPARTMENTS

Sec. 27. The Council shall appoint an officer, who shall be known as the City Manager, who shall be the administrative head of the Municipal Government and who shall be responsible for the efficient administration of all departments. He shall receive such salary as may be fixed by the Council: provided, however, that said salary shall not exceed the sum of \$10,000 per annum. He shall be chosen by the Council without regard to his political beliefs, and solely on the basis of his executive and administrative qualifications.

He shall be appointed for an indefinite period. He can not be removed from office except by a vote of six members of the Council.

He shall serve at the will of the Council, and in case of his removal he may demand written charges and a public hearing thereon before the Council, prior to the date upon which his final removal is to take place; but the decision and action of the Council upon such hearing shall be final, and pending such hearing the Council may suspend him from duty.

During the absence or disability of the City Manager, the Council shall designate some properly qualified person to perform his duties. Whenever a vacancy occurs in this office, the Council shall immediately proceed to elect a City Manager.

Sec. 28. The City Manager shall be responsible to the Council for the efficient administration of all the affairs of the City. He shall have the power, and it shall be his duty:

(a) To see that all laws and ordinances are duly enforced, and he is hereby declared to be beneficially interested in their enforcement and to have the power to sue in the proper court to enforce them.

(b) Except as otherwise provided in this charter, to appoint, discipline or remove all heads or directors of departments, chief officials, and all subordinate officers and employees of the City, subject to the Civil Service provision of this charter. Neither the Council nor any of its committees or members shall dictate or attempt to dictate, either directly or indirectly, the appointments of any person to office or employment by the City Manager or in any manner interfere with the City Manager or prevent him from exercising his own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager, either publicly or privately.

(c) To exercise control over all departments, divisions and bureaus of the City Government and over all the appointive officers and employees thereof.

(d) Except when the Council is considering his removal, to attend all regular meetings of the Council and its committees, with the right to take part in discussions, but without power to vote. He shall receive notice of all special meetings.

(e) To recommend to the Council for adoption such measures and ordinances as he may deem necessary or expedient.

(f) To make investigations into the affairs of the City, or

any department or division thereof, or any contract, or the proper performance of any obligation running to the City.

(g) To prepare and submit to the Council the annual budget.

(h) To keep the Council at all times fully advised as to the financial condition and needs of the City.

(i) To submit to the Council, at each meeting, for its approval, a list of all claims and bills approved for payment by him.

(j) To devote his entire time to the duties and interests of the City.

(k) To perform such other duties as may be prescribed by this charter or be required by ordinance or resolution of the Council.

He shall be charged with the general supervision of all public utility companies insofar as they are subject to municipal control; he shall keep himself fully informed as to their compliance in all respects with the law, and he shall see that all franchises granted by the City are faithfully observed. He shall cause to be instituted such actions or proceedings as may be necessary to prosecute public utility companies for violations of law, and revoke, cancel or annul all franchises that may have been granted by the City to any person, firm or corporation, which have become forfeitable in whole or in part, or which for any reason are illegal and void and not binding upon the City. The City Attorney, on demand of the City Manager, must institute and prosecute the necessary actions to enforce the provisions of this sub-section.

Sec. 30. The chief officials of the City shall be City Clerk, Assessor, Treasurer, Collector, Attorney, Engineer, Chief of Police, Fire Chief, Street Superintendent, Health Officer, and five Library Trustees. . . .

The City Manager at any time when in his judgment the interests of the City so demand, may consolidate and place in charge of one such officer, the functions and duties of two or more such officers. The Council shall by ordinance prescribe the duties of all the chief officials.

Sec. 31. The Council shall have power by ordinance to create and discontinue departments, bureaus, offices, deputyships, assistantships and employments other than those prescribed in this charter, and to prescribe the duties pertaining thereto.

Sec. 32. The compensation of all city officers provided for by Section 30 of this Charter, except Library Trustees, who shall

receive no remuneration, shall be by salary to be fixed by the Council on the recommendation of the City Manager. The Council shall also fix the compensation of all other officers and employees on recommendation of the City Manager, except as in this Charter otherwise provided. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensations, aside from the salary or compensation as fixed by the Council, but all fees received by him in connection with his official duties shall be paid by him into the City Treasury.

Sec. 33. Each department and commission shall annually on such date as may be fixed by the Council, render to the City Manager a full report of all operations of such department or commission for the year.

Sec. 34. The Council shall provide for the publication of the annual report of the City Manager.

Sec. 35. No member of the Council shall hold any other municipal office. . . .

ARTICLE VIII.

THE COUNCIL

Sec. 38. The Council shall be the governing body of the municipality. It shall exercise the corporate powers of the City, and, subject to the express limitations of this Charter, shall be vested with all powers of legislation in municipal affairs adequate to a complete system of local government consistent with the Constitution of the State. . . .

ARTICLE IX.

POWERS OF THE CITY AND OF THE COUNCIL

Sec. 47. Without denial or disparagement of other powers held under the constitution and laws of the State, the City of Berkeley shall have the right and power:

(1) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate libraries, reading rooms, art galleries, museums, schools, kindergartens, parks, playgrounds, places of recreation, fountains, baths, public toilets, markets, market houses, abattoirs, dispensaries, infirmaries, hospitals, charitable institutions, jails, houses of correction and farm schools, work houses, detention homes, morgues, cemeteries, crema-

ories, garbage collection and garbage disposal and reduction works, street cleaning and sprinkling plants, quarries, wharves, docks, waterways, canals, and all other public buildings, places, works and institutions.

(2) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate waterworks, gas works, electric light, heat and power works, within or without the City, and to supply the City and its inhabitants and also persons, firms and corporations outside the City, with water, gas and electricity.

(3) To acquire by purchase, condemnation or otherwise, and to establish, maintain, equip, own and operate telephone and telegraph systems, cable, electric or other railways, ferries and transportation service of any kind.

(4) To sell gas, water, electric current and all products of any public utility operated by the City.

(5) To acquire by purchase, condemnation or otherwise within or without the City, such lands or other property as may be necessary for the establishment, maintenance and operation of any public utility or to provide for and effectuate any other public purpose; and to sell, convey, encumber and dispose of the same for the common benefit.

(6) To lease to corporations or individuals for the purpose of maintenance and operation any public utility owned by the City.

(7) To receive bequests, gifts and donations of all kinds of property, in fee simple, or in trust for charitable and other purposes, and do all acts necessary to carry out the purpose of such bequests. . . .

(8) To borrow money for any of the purposes for which the City is authorized to provide and for carrying out any of the powers which the City is authorized to enjoy and exercise and to issue bonds therefor; provided, that in the procedure for the creation and issuance of such bonded indebtedness the general laws of the State of California in force at the time of such proceedings are taken shall be observed and followed.

(11) To sue and defend in all courts and places and in all matters and proceedings. . . .

Sec. 49. As the legislative organ of the City, the Council, subject to the provisions and restrictions of this Charter, shall have power:

(1) To provide a corporate seal, with appropriate device, to be affixed to all instruments or writings needing authentication.

(2) To prescribe fines, forfeitures and penalties for the violation of any provision of this Charter or of any ordinance; but no penalty shall exceed five hundred dollars or six months' imprisonment, or both.

(3) To provide for the summary abatement of any nuisance at the expense of the person or persons creating, causing, committing or maintaining such nuisance.

(4) To offer rewards not exceeding two hundred and fifty dollars in any one instance for the apprehension and conviction of any person who may have committed a felony in the City, and to authorize the payment thereof.

(5) To organize and maintain police and fire departments, erect the necessary buildings and own all implements and apparatus required therefor.

(6) To establish and maintain a fire alarm and police telegraph or telephone system, and manage and control the same. . . .

(7) To regulate or prohibit the manufacture, keeping, storage and use of powder, dynamite, guncotton, nitroglycerine, fireworks and other explosive materials and substances.

(8) To regulate the storage of hay, straw, oil and other inflammable and combustible materials.

(9) To regulate the use of steam engines, gas engines, steam boilers, and electric motors, and to prohibit their use in such localities as in the judgment of the Council would endanger public safety.

(10) To prescribe fire limits and determine the character and height of buildings that may be erected therein and the nature of the materials to be used in the construction, alteration or repair of such buildings or in the repair or alteration of existing buildings within such fire limits.

(11) To regulate the construction of and the materials used in all buildings, chimneys, stacks and other structures; to prevent the erection and maintenance of insecure or unsafe buildings, walls, chimneys, stacks or other structures, and to provide for their summary abatement or destruction; to regulate the materials used in and the method of construction of foundations and foundation walls, the manner of construction and location of drains and sewers, the materials used in wiring buildings or other structures for the use of electricity for lighting, power, heat and other pur-

poses, and materials used for piping buildings or other structures for the purpose of supplying the same with water or gas and the manner of so doing; to prohibit the construction of buildings and structures which do not conform to such regulations.

(12) To require the owners and lessees of buildings or other structures to place upon them or in them fire escapes and appliances for protection against fire and for the extinguishment of fires.

(13) To prevent the construction and to cause the removal of dangerous chimneys, fireplaces, hearths, stoves, stove pipes, ovens, boilers, apparatus and machinery used in any building in the City; to regulate the carrying on of manufactories liable to cause fire; to prevent the depositing of ashes, the accumulation of shavings, rubbish, or any combustible material in unsafe places, and to make provisions to guard against fires.

(14) To regulate the size and construction of the entrances to and exits from all theatres, lecture rooms, halls, schools, churches, and other places for public gathering of every kind and to prevent the placing of seats, chairs, benches or other obstructions in the hallways, aisles or open places therein.

(15) To regulate the speed of railroad trains, engines and cars passing through the City and the speed of cars of street or interurban railway companies using the public streets of the City, to require railroad companies to station flagmen, place gates or viaducts at all such street crossings as the Council may deem proper, to require street cars and local trains to be provided with fenders or other appliances for the better protection of the public; to prohibit the making up of railroad trains on any of the streets, street crossing or street intersections of the City; to regulate the speed with which persons may ride or drive or propel bicycles, automobiles or other vehicles along or upon any of the streets or highways of the City.

(16) To regulate or prohibit the exhibition or carrying of banners, placards, or advertisements, and the distribution of handbills in the street, public grounds or upon the sidewalks; to regulate and prevent the flying of banners, flags or signs across the streets or from houses; to regulate or prohibit traffic and sales in the streets and public places; to prevent encroachments upon or obstructions to the streets, and to require their removal.

(17) To compel the owner or occupant of buildings or grounds

to remove dirt, rubbish and weeds from the sidewalk opposite thereto. . . .

(18) To regulate, license or prohibit the construction and use of billboards and signs.

(19) To regulate and prevent the running at large of dogs, to prevent dog fights in the streets, to provide for the destruction of vicious dogs, and to require the payment of license fees by the owners or persons having possession of dogs. . . .

(20) To prevent or regulate the running at large of any animals, and to establish and maintain a pound and authorize the destruction or other disposition of any animals running at large.

(21) To prohibit and punish cruelty to animals, and to require the places where they are kept to be maintained in a clean and healthful condition.

(22) To make all regulations which may be necessary and expedient for the preservation of health and the suppression of disease; to make regulations to prevent the introduction of contagious, malignant, infectious or other diseases into the City; to make quarantine laws and regulations; to regulate, control and prevent the entry into the City of persons, baggage, merchandise or other property infected with contagious disease.

(23) To regulate or prohibit the operation of all manufactories, occupations or trades which may be of such a nature as to affect the public health or good order of the City or disturb the public peace, or which may be offensive or dangerous to the inhabitants residing in the vicinity, and to provide for the punishment of all persons violating such regulations and the punishment of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them; to make regulations for the suppression of disagreeable, offensive and injurious noises.

(24) To provide for and regulate the inspection by the Health Officer of meats, poultry, fish, game, bread, butter, cheese, lard, eggs, vegetables, breadstuffs, milk and other food products offered for sale in the City, and to provide for the taking and summarily destroying of any such products as are unsound, spoiled, adulterated, or unwholesome, and to regulate and prevent bringing into the City or having or keeping within the City any such unsound, spoiled, adulterated or unwholesome products.

(25) To provide for and regulate the inspection of all dairies that offer for sale or sell any of their products in the City.

(26) To regulate lodging, tenement and apartment houses and to prevent the overcrowding of the same and to require that they be put and kept in proper sanitary condition.

(27) To regulate the construction, repair and use of sewers, sinks, gutters, wells, cesspools, and vaults, and to compel the connecting, cleaning, or emptying of the same, and to designate the time and manner in which the work shall be done.

(28) To provide for the collection and disposal of garbage, ashes, animal and vegetable refuse, dead animals, animal offal, rubbish and waste matter.

(29) To license for purpose of regulation and revenue all and every kind of business not prohibited by law to be transacted or carried on in the City; to fix the rates of licenses upon the same, and to provide for the collection thereof by suit or otherwise.

(30) To establish stands for hacks, public carriages, express wagons, and other public vehicles for hire, and regulate the charges of such hacks, public carriages, express wagons, and other public vehicles, and to require schedules of such charges to be posted in or upon such public vehicle.

(31) To provide for the inspection and sealing of all weights and measures used in the City, and enforce the keeping and use by dealers of proper weights and measures duly tested and sealed.

(32) To license, regulate, restrain or prohibit all exhibitions, public shows, games and amusements; to prevent and prohibit all descriptions of gambling and fraudulent devices and practices, all playing of cards, dice or other games of chance for the purpose of gambling, . . . and to authorize the destruction of all instruments used for the purpose of gambling.

(33) To restrain and punish vagrants, mendicants, lewd persons and prostitutes; to prevent and punish drunkenness, prize fights and all offensive, immoral, indecent and disorderly conduct and practices in the City.

(34) To levy and collect taxes upon all real and personal property within the City, subject to the limitations elsewhere in this Charter provided.

(35) To order the repaying by the Treasurer of any taxes, percentages or costs erroneously or illegally collected.

(36) To fix the fees and charges for all official services not otherwise provided for in this Charter.

(37) To provide an urgent necessity fund not exceeding five hundred dollars a year, to be expended under the direction of the Mayor.

(38) To provide for the lease of any lands now or hereafter owned by the City, but all leases shall be made at public auction to the highest responsible bidder. . . .

(39) To provide for the purchase of property levied upon or under execution in favor of the City, but the amount bid on such purchase shall not exceed the amount of judgment and costs.

(40) To provide for the sale at public auction, after advertising for five days, of personal property unfit or unnecessary for the use of the City.

(41) To provide for the execution of all trusts confided to the City.

(42) To establish or change the grade of any street or public place.

(43) To order the whole or any part of any street, avenue, lane, alley, court or place within the City of Berkeley to be graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or re-macadamized, graveled or re-graveled, piled or re-piled, capped or re-capped, sewerred or re-sewerred, and to order sidewalks, manholes, culverts, cesspools, gutters, tunnels, curbing and cross walks to be constructed therein, and to order breakwaters, levees or walls of rock or other material to protect the same and also any other work or improvement therein; to provide for the care of shade trees planted therein and to cause shade trees to be planted, set out and cultivated therein; and also to order drainage or sanitary sewers or storm water sewers to be constructed on or through private property. . . .

(44) To order the opening, extending, widening, straightening or closing of any street, lane, alley, court or public place within the City or over tide lands and lands covered by the waters of San Francisco Bay within the City. . . .

(45) To provide for the lighting of the streets, highways, public places, and public buildings and for supplying the City with water for municipal purposes.

(46) To set apart as a boulevard or boulevards any street or streets over which there is no existing franchise for any railroad and to regulate and prevent heavy teaming thereon. . . .

(47) Whenever any street or portion of a street shall be abandoned or closed by ordinance, to convey by deed such street

or portion of street so abandoned or closed, to the owners of the lands adjacent thereto in such wise as the Council shall deem that equity requires.

(48) To improve, keep in repair and control the waterfront of the City, to fix the rates of wharfage, dockage, and tolls, and provide for the collection thereof, to license, regulate and control the landing, anchorage and moorage of steamboats, sailing vessels, rafts, tug boats and all other watercraft within the jurisdiction of the City.

(49) To fix and determine by ordinance in the month of February of each year, to take effect on the first day of July thereafter, the rates or compensation to be collected by any person, firm or corporation in the City, for the use of water, heat, light, power or telephone service, supplied to the City or to the inhabitants thereof, and to prescribe the quality of the service.

(50) To regulate street railroads, their tracks and cars. . . .

(51) To require every railroad company to keep the streets in repair between the tracks, and along and within the distance of two feet upon each side of the tracks, occupied by the company.

(52) To permit the laying down of spur or side tracks and running cars thereon, for the purpose of connecting warehouses, manufactories or other business industries and enterprises with any line of railroads that may be built along the water front or with any other lines of railroad which do now or may hereafter enter the City, subject to such regulations and conditions as may be prescribed from time to time by the Council. . . .

(53) To cause the removal and placing underground of all telephone, telegraph, electric light or other wires within the City, or within any designated portion thereof, and to regulate or prohibit the placing of poles and suspending of wires along or across any of the streets, highways and public places in the City.

(54) To regulate the size and location of all water pipes, gas pipes, and all other pipes and conduits laid or constructed in the streets and public places, and to require the filing of charts and maps of such pipes and conduits.

(55) To make all rules and regulations governing elections not inconsistent with this Charter.

(56) To establish a bureau of Civil Service and to appoint a commission, to serve without compensation, to administer the same under the rules and regulations to be made by the Council. Such commission shall, among other things, provide for the classification

of all employments in the administrative service of the City not excepted by the provisions of this Charter, by the Council or by the people, for open, competitive and free examinations as to fitness, for an eligible list from which vacancies shall be filled, for a period of probation before employment is made permanent, and for promotion on the basis of merit, experience and record.

(57) To establish a Civic Art Commission. . . .

(58) To establish a Park Commission. . . .

(59) To establish a Playground Commission. . . .

(60) To establish a Commission of Public Charities. . . .

(61) To provide a suitable procedure for taking over or otherwise acquiring municipal ownership of public utilities.

(62) To enact appropriate legislation and do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City or any of the provisions of this Charter, and to exercise all powers not in conflict with the Constitution of the State, with this Charter or with ordinances adopted by the people of the City.

ARTICLE X.

FINANCE AND TAXATION

. . . .

Sec. 52. On or before the first Monday in April in each year, or on such date in each year as shall be fixed by the Council, the heads of departments, offices, boards and commissions shall send to the City Manager a careful estimate, in writing, of the amounts, specifying in detail the objects thereof, required for the business and proper conduct of their respective departments, offices, boards and commissions, during the next ensuing fiscal year.

Sec. 53. On or before the first Monday in May in each year, or on such date in each year as shall be fixed by the Council, the City Manager shall submit to the Council a tentative budget which shall contain an estimate of the probable expenditures of the City Government for the next ensuing fiscal year, stating the amount required to meet the interest and sinking funds for the outstanding funded indebtedness of the City, and the wants of all departments of the municipal government in detail, and showing specifically

the amount necessary to be provided for each fund and department; also an estimate of the amount of income from fines, licenses and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by taxation.

Sec. 54. The Council shall meet annually prior to fixing the tax levy, and after considering the tentative budget submitted by the City Manager shall make a final budget of the estimated amounts required to pay the expenses of conducting the business of the City Government for the next ensuing fiscal year. . . .

And the Council at the same time shall pass an annual appropriation ordinance, which shall be based upon the budget submitted by the City Manager, and made up as herein provided. The total amount of appropriations shall not exceed the estimated revenues of the City.

Before the annual appropriation ordinance has been passed, the Council may make temporary appropriations for current department expenses, chargeable to the appropriations of the year when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation is in force. . . .

At any meeting after the passage of the appropriation ordinance, the Council by a vote of six of its members may amend such ordinance, so as to authorize the transfer of unused balances appropriated for any purpose, including the emergency fund, to another purpose, or to appropriate available revenues not included in the annual budget. . . .

Sec. 56. The Council must finally adopt, not later than the first Tuesday in September, an ordinance levying upon the assessed valuation of the property in the City, subject to the provisions of this Charter, a rate of taxation upon each hundred dollars of valuation sufficient to raise the amounts estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue. . . .

Sec. 57. The tax levy authorized by the Council to meet the municipal expenses for each fiscal year shall not exceed, except as herein provided, the rate of one dollar on each one hundred dollars of the assessed value of all real and personal property within the City. . . .

ARTICLE XI.

PUBLIC WORKS AND SUPPLIES

. . . .

ARTICLE XII.

FRANCHISES

. . . .

ARTICLE XIII.

THE INITIATIVE

. . . .

ARTICLE XIV.

THE REFERENDUM

. . . .

ARTICLE XV.

THE PUBLIC SCHOOLS

. . . .

ARTICLE XVI.

MISCELLANEOUS

. . . .

Sec. 115. The City of Berkeley shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, however, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise, any and all rights, powers and privileges heretofore or hereafter granted or prescribed by general laws of the State. . . .

APPENDIX I

SUPPLEMENTARY MATERIAL IN PAMPHLET FORM ¹

Key to Abbreviations.

A.A.I.C.	American Association for International Conciliation, 407 W. 117th St., New York, N. Y.
A.H.L.	American History Leaflets, Simmons-Peckham Co., 112 E. 19th St., New York, N. Y.
H.J.	Haldeman-Julius Co., Girard, Kansas.
O.S.L.	Old South Leaflets, Old South Association in Boston, Old South Meeting-house, Boston, Mass.
S.P.D.	Superintendent of Public Documents, Washington, D. C.
W.P.F.	World Peace Foundation, 40 Mt. Vernon St., Boston, Mass.

1. HISTORICAL DOCUMENTS.

A. Colonial.

1. *Magna Carta. O. S. L. No. 5, 5c; S. P. D. 5c.
2. ✓ Charter of Massachusetts Bay, 1629. O. S. L. No. 7, 5c.
3. Massachusetts Body of Liberties, 1641. O. S. L. No. 164, 5c; A. H. L. No. 25, 30c.
4. ✓ New England Confederation, 1643. O. S. L. No. 169; 5c; A. H. L. No. 7, 30c.
5. Franklin's Plan of Union, 1754. O. S. L. No. 9, 5c.
6. Plans of Union, 1696-1780. A. H. L. No. 14, 30c.
7. Declaration of Independence. O. S. L. No. 3, 5c; A. H. L. No. 11, 30c (contains also Jefferson's proposed Instructions to the Virginia Delegates, 1774); S. P. D. 5c. See also Constitution of the United States.

B. Formation of the Constitution.

1. Articles of Confederation. O. S. L. No. 2, 5c; A. H. L. No. 20, 30c (contains also Franklin and Dickinson drafts). See also Constitution of the United States.
2. Northwest Ordinance, 1787. O. S. L. No. 13, 5c.

¹Literature of a purely propagandist nature is not listed unless it has some special importance for the study of American government. Many of the pamphlets named contain material other than the single document mentioned. Where no price is given, the pamphlet may in most cases be obtained gratis.

3. Proposals to Amend the Articles of Confederation, 1780-1787. A. H. L. No. 28, 30c.
4. Constitution of the United States (with Amendments). O. S. L. No. 1, 5c; A. H. L. No. 8, 30c; S. P. D. 5c; Lefax Co. (9th and Sansom Sts., Philadelphia, Pa.) No. 6-81, 10c; Nat. Security League; Nat. Assoc. for Constitutional Government; H. J. No. 687, 10c; Carnegie Endowment, \$1.00 (with Declaration of Independence and Articles of Confederation).
5. The Federalist, Nos. 1, 2. O. S. L. No. 12, 5c.
6. Virginia and Kentucky Resolutions, A. H. L. No. 11, 30c.

II. MESSAGES AND ADDRESSES OF THE PRESIDENT.

A. *Annual Messages.*

The annual message of the President is printed for the use of Congress. Copies may sometimes be secured from members of Congress. The surplus is transferred to the Superintendent of Public Documents for sale. A large number dating from 1887 to the present time are available there at five cents each. Other messages of special interest are:

1. President Monroe, 1823. O. S. L. No. 56, 5c; A. H. L. No. 4, 30c (contains also supplementary declarations relative to the Monroe Doctrine, 1789-1891.)
2. Lincoln's First Message, 1861. A. H. L. No. 18, 30c (contains also Lincoln's First Inaugural.)

B. *Special Messages.*

Many of the more important special messages of the President may be obtained from the Superintendent of Public Documents at five cents each. Of special interest are the following:

1. Monroe, Messages on Florida. O. S. L. No. 129, 5c.
2. Taft, Transmitting Report of Economy and Efficiency Commission (1913). S. P. D. 5c.
3. Harding, First Budget Message, 1921. S. P. D. 5c.

C. *Other Public Addresses.*

The inaugural addresses of the Presidents are published in pamphlet form and current numbers are obtainable from

the Superintendent of Public Documents at five cents each. Other public addresses obtainable in pamphlet form are:

1. Washington's Inaugural Addresses. O. S. L. No. 10, 5c.
2. Adams' Inaugural Addresses. O. S. L. No. 103, 5c.
3. Jefferson's Inaugural Addresses. O. S. L. No. 104, 5c.
4. Washington's Farewell Address. O. S. L. No. 4, 5c. S. P. D. 11c.
5. War Speeches of Woodrow Wilson. H. J. No. 125. 10c.
6. Speeches of Washington. H. J. No. 276. 10c.
7. Speeches of Lincoln. H. J. No. 214. 10c.

III. OTHER NATIONAL EXECUTIVE DOCUMENTS.

1. Chart showing present organization of government departments (1923), with proposed changes. S. P. D. 5c.
2. Statement of organization of government departments, with proposed changes. (1923). S. P. D. 11c.
3. Census Bulletins. Large assortment to be had from the Superintendent of Public Documents. See Price List 70, "Census."
4. Civil Service, General Information Circular. Civil Service Commission, Washington, D. C.
5. American Foreign Service. S. P. D. 5c; Department of State.
6. Naturalization Forms. Some of these may be secured from the Commissioner of Naturalization, Department of Labor. Some are reprinted in the following pamphlets [See also Naturalization Laws]:
 "How to Obtain Citizenship Papers," Nat. Security League.
 "How to become a Citizen," Foreign Language Information Service.
 "Syllabus of Naturalization Laws." Bureau of Naturalization, Department of Labor.
7. Tariff Commission, special surveys. A large number of these have been published. See S. P. D. Price list No. 37, "Tariff and Taxation." These pamphlets are also listed in Public Affairs Information Service.

8. Documents Relating to Territorial Administration. A. H. L. No. 32, 30c.
9. Extracts from Official Papers relating to the Isthmian Canal, 1515-1909. A. H. L. No. 34, 30c.

IV. U. S. STATUTES AND TREATIES.

- A. *Current Statutes:* (These are published in the form of slip laws and may be secured currently from the Superintendent of Public Documents for five cents each. Those which are exceptionally long cost slightly more.)
- B. *Acts of Special Importance for American Government.*
 1. Civil Service Act (with rules and executive orders, as amended). Civil Service Commission, Washington, D. C.
 2. Civil Service Retirement Act (as amended). S. P. D. 5c; Civil Service Commission, Washington, D. C.
 3. Classification Act of 1923. S. P. D. 5c.
 4. Act authorizing consolidation of executive bureaus, 1918. S. P. D. 5c.
 5. Interstate Commerce Acts (as amended to 1923). S. P. D. 20c.
 6. Transportation Act of 1920 (Esch-Cummins Law). S. P. D. 5c.
 7. Federal Anti-Trust Laws (as amended.) S. P. D. 10c; Department of Justice; Document Room, House of Representatives.
 8. Employers' Liability Laws (1922). S. P. D. 5c.
 9. Pure Food and Drug Acts (as amended, 1922). S. P. D. 5c.
 10. Federal Reserve Act (as amended, 1923). S. P. D. 15c.
 11. Federal Farm Loan Act, 1916. S. P. D. 10c.
 12. Agricultural Credits Act, 1923. S. P. D. 5c.
 13. Federal Power Commission Act, 1920. S. P. D. 5c.
 14. Oil Land Leasing Acts, 1924. S. P. D. 5c.
 15. Coal Commission Acts, 1923. S. P. D. 5c.
 16. Cotton Standards Act, 1923. S. P. D. 5c.
 17. Copyright Law, 1923. S. P. D. 10c.
 18. Fordney-McCumber Tariff Act, 1922. S. P. D. 10c.
 19. Volstead Act. S. P. D. 5c.

20. Vocational Education Act (Smith-Hughes), 1917. S. P. D. 5c.
21. Maternity Act, 1921. S. P. D. 5c.
22. Highway Construction Act, 1916. S. P. D. 5c.
23. Immigration Laws and Rules, 1924. S. P. D. 15; Bureau of Immigration, Department of Labor.
24. Espionage Act. S. P. D. 5c.
25. Naturalization Acts. S. P. D. 5c.
With regulations and forms. Bureau of Naturalization, Department of Labor; Fletcher Tract Co., 1300 E. 1st St., Los Angeles, 50c (contains also Declaration of Independence and Constitution).
26. Cable Act for Naturalization of Married Women, 1922. S. P. D. 5c.

C. *Treaties.*

These are published when proclaimed by the Secretary of State. Copies may be secured (currently) from the Secretary of State or from the Superintendent of Public Documents. Treaties of special interest to students of American Government are:

1. Treaty of Peace with Germany, 1919. A. A. I. C. No. 142, 5c; W. P. F. 25c; S. P. D. 5c.
2. Treaties of Peace between U. S. and Germany, Austria, and Hungary. S. P. D. 5c each; Department of State; A. A. I. C. No. 170, 5c.
3. Washington Treaties for Limitation of Naval Armaments. S. P. D. 5c each; Department of State; A. A. I. C. No. 172, 5c.
4. Extradition treaty with Esthonia, 1924. S. P. D. 5c; Department of State.
5. Isle of Pines Treaty. S. P. D. 5c; Department of State.

V. OTHER DOCUMENTS OF NATIONAL INTEREST.

A. *Congressional Documents.*

1. Hearings of Committees. These are usually too large for class distribution. Copies may be secured from members of Congress or from the Superintendent of Public Documents.

2. Reports of Committees. When these are printed, they may be secured currently from members of Congress or from the Superintendent of Public Documents.
3. Contested Election Cases. A large number of these are available. See Price List 54, "Political Science." Superintendent of Public Documents.
4. Bills, Joint Resolutions, Concurrent Resolution, and Resolutions. These may be secured from the member who introduced them, or from other members of Congress, if applied for currently.
5. Congressional Directory. S. P. D. 50c; members of Congress.
6. Rules of the House of Representatives (with Jefferson's Manual and the Constitution.) S. P. D. 50c; members of Congress.
7. Rules of the Senate. S. P. D. 50c; U. S. Senators.
8. Congressional Record (daily issues). S. P. D. 15c; members of Congress.
9. Calendars of the House and Senate (daily). Members of Congress.

B. United States Supreme Court.

1. Rules of the Supreme Court. S. P. D. 5c.
2. Reports of the Supreme Court (pamphlets published currently). S. P. D. 25c; "Supreme Court Reporter," West Publishing Co., St. Paul; "Lawyers' Edition," Lawyers' Coöperative Publishing Co., Rochester, N. Y.
3. Dred Scott Decision (Extracts). A. H. L. No. 23, 30c.

C. International.

The World Peace Foundation is the American distributor for the numerous publications of the League of Nations. Documents of particular interest for American Government are:

1. Covenant of the League of Nations. S. P. D. 5c; A. A. I. C. (Mr. 1919) 5c; A. A. I. C. No. 139, 5c; Institute of International Education, No. 1. 25c (with explanatory outline); League to Enforce Peace; W.

- P. F. 5c (contains amendments proposed). See also Treaties.
2. Rules of Procedure of the Assembly of the League of Nations, W. P. F. 20c.
 3. Permanent Court of International Justice. W. P. F. 20c.
Draft Scheme for. A. A. I. C. No. 157. 5c.
Resolution establishing. W. P. F. 5c.
 4. Chart of League of Nations and Permanent Court of International Justice. W. P. F. 5c.

D. *Political Parties.*

1. Platforms. (These are published by the party and are distributed gratis during the campaign. Address the national committee headquarters); H. J. No. A-1000, 10c.
2. Political Tracts. (These are distributed gratis during the campaign. Address the national committee headquarters.)

VI. STATE GOVERNMENT.

A. *Constitutions.*

The following states have published their constitutions in pamphlet form during recent years:

1. Alabama. Constitution (1901), Amendments to the Constitution (1923). Secretary of State.
2. Arizona. Constitution (1917). Legislative Reference Library; Secretary of State.
3. California. Constitution (1923). Secretary of State. Constitution with summary of amendments (1917). Legislative Counsel Bureau.
4. Colorado. Constitution (1918). Secretary of State, 50c.
5. Connecticut. Constitution. (1922). Secretary of State.
6. Delaware. Constitution (1923). Secretary of State.
7. Georgia. Constitution and amendments (1924). Assistant State Librarian, 50c.
8. Idaho. Constitution (1915). Secretary of State.

9. Illinois. Constitution (1922). Secretary of State.
Constitution annotated (1920). Legislative Reference Bureau.
10. Indiana. Constitution (contains also U. S. Constitution) (1922). Legislative Reference Bureau.
11. Iowa. Constitution with historical Introduction. (1919). Secretary of State; (1922) State Historical Society, 50c.
12. Kansas. Constitution with amendments (1920). Secretary of State.
13. Louisiana. Constitution (contains also Act authorizing the Constitutional Convention, 1921, and facsimile signatures of members) (1921). Secretary of State.
14. Maine. Constitution (1920). Secretary of State.
15. Maryland. Budget Amendment (1917). Department of Legislative Reference.
16. Massachusetts. Constitution (1922). Secretary of the Commonwealth.
17. Michigan. Constitution (1919). Secretary of State.
18. Minnesota. Constitution (1923). Secretary of State.
19. Missouri. Constitution, annotated (1923). Secretary of State.
20. Nebraska. Constitution (1920). Secretary of State.
21. Nevada. Constitution (contains also U. S. Constitution) (1921). Secretary of State.
22. New Jersey. Constitution (1923). Secretary of State.
23. New York. Constitution (1923). Secretary of State.
24. North Carolina. Constitution annotated (1922). Secretary of State.
25. North Dakota. Constitution annotated (1922). Secretary of State.
26. Ohio. Constitution (1922). Secretary of State; Legislative Reference Department.
27. Oklahoma. Constitution (1907) (contains also enabling act). Secretary of State.
28. Oregon. Constitution (1919). Secretary of State.
29. Pennsylvania. Constitution (contains also U. S. Constitution) (1916). Legislative Reference Bureau.
30. Rhode Island. Constitution with amendments (1922). Secretary of State.

31. South Dakota. Constitution, annotated (1923). Secretary of State.
32. Tennessee. Constitution (contains also Acts for calling of constitutional convention) (19—). Secretary of State.
33. Texas. Constitution (contains also U. S. Constitution) (19—). Secretary of State.
34. Utah. Constitution with amendments (1923). Secretary of State.
35. Vermont. Constitution with amendments (1924). Secretary of State.
36. Virginia. Constitution (1923). Secretary of State.
37. Washington. Constitution (contains also enabling act) (1923). Secretary of State.
38. Wisconsin. Constitution (contains also U. S. Constitution and historical sketch) (1918). Department of State.
39. Wyoming. Constitution (1908). Secretary of State.

Other states publish their constitution in the legislative manuals or other documents. Attention should also be called to the "Model State Constitution with supporting Articles" published by the National Municipal League, 25c.

B. *Executive Documents.*

1. *Governor's Messages.*

The regular messages of the governor to the legislature are published in practically all of the states. Copies of current messages may be generally secured by addressing the governor of the state concerned.

Special messages, particularly the budget messages, are frequently published and may be secured from the governor.

2. *State Budgets.*

These are generally too bulky for general class distribution. The following states have published budgets

during the past four years. The agency publishing the budget is given rather than the agency compiling it.

1. Arizona. Governor.
2. California. Governor.
3. Connecticut. Governor.
4. Delaware. Governor.
5. Illinois. Governor.
6. Indiana. Governor.
7. Iowa. Governor.
8. Kansas. Governor.
9. Louisiana. Tax Commission.
10. Maryland. Governor.
11. Nebraska. Department of Finance.
12. New York. Board of Estimate and Control.
13. Ohio. Governor.
14. Oregon. Budget Commissioners.
15. Pennsylvania. Governor.
16. Rhode Island. State Treasurer.
17. South Carolina. Governor.
18. Texas. Board of Control.
20. Vermont. Legislative Committee on the Budget.
21. Virginia. Governor.
22. Wisconsin. Board of Public Affairs.

3. *Other addresses and documents of the Governor.*

1. Inaugural Addresses. These are usually delivered in the form of messages to the legislature. A few states publish separate inaugural addresses.
 - a. New Mexico. 1923. Governor.
 - b. Maryland. 1924. Governor.
 - c. Pennsylvania. 1923. Governor.
2. Public Addresses. Texas. 1923. Governor.
3. Appeals to the People.
 - a. Kansas. 1923. "Where your tax dollar of 1922 goes." Governor.
 - b. New York. 1924. "Financial statement issued to the people." Governor.

4. *Regular Reports of State Executive Departments.*

These are frequently published, but are often too bulky for general class distribution. Current copies may usually be secured from the department concerned.

5. *Election Laws.*

Many states publish the election laws separately in pamphlet form. These are generally distributed gratis to their own citizens, and after elections may frequently be obtained in limited quantities by citizens of other states.

1. Alabama. Primary Law, 1919. Democratic State Executive Committee, 50c; Department of Archives and History.
2. Arizona. Election Laws, 1924. Secretary of State.
3. Arkansas. Digest of Election Laws, 1911. Secretary of State.
Primary Election Laws, 1916. Secretary of State.
Absent Voters Law, 1917. Secretary of State.
4. California. Election Laws, 1922. Legislative Counsel Bureau; Secretary of State.
Forms provided for by the Presidential Primary Act, 1924. Secretary of State.
5. Colorado. Election Laws, annotated, 1922. Secretary of State.
6. Connecticut. Election and Naturalization Laws, 1919. Secretary of State.
Election Laws, 1922. Secretary of State.
7. Delaware. Registration and Election Laws, 1921. Secretary of State.
Amendments to Registration and Election Laws, 1923. Secretary of State.
8. Florida. Election Laws, 1923. Secretary of State.
9. Idaho. Election Laws, 1922. Secretary of State.
10. Illinois. Election Laws, 1923. Secretary of State.
Primary Election Laws, 1921. Secretary of State.
Election Laws, 1923. Board of Election Commissioners, Chicago, Ill.

11. Indiana. Election Laws, 1922. Board of Election Commissioners.
Election Laws, 1924. Board of Election Commissioners.
Election Laws (Primary Elections), 1924. Board of Election Commissioners.
12. Kansas. Primary Election Laws, 1924. Secretary of State.
13. Kentucky. Election Laws, 1924. Secretary of State.
14. Louisiana. General Election Laws, 1916. Secretary of State.
Primary Election Law, 1922. Secretary of State.
15. Maine. Laws pertaining to Elections, 1924. Secretary of State.
Primary Election Law, 1924. Secretary of State.
Absent Voting Law, 1922. Secretary of State.
16. Maryland. Registration and Election Laws, 1923. Secretary of State.
17. Massachusetts. General Laws relating to Primaries, Caucuses and Elections, 4 parts, 1921. Secretary of the Commonwealth.
18. Michigan. Laws relating to Elections, 1924. Secretary of State.
19. Minnesota. Election Laws, 1924. Secretary of State, 10c.
Selected Opinions of the Attorney General relating to Elections, 1920. Attorney General.
Digest of Election Laws, 1922. Minnesota League of Women Voters, 313 Meyers Arcade, Minneapolis, Minn.
20. Nebraska. Election Laws, 1923. Secretary of State, 80c.
21. Nevada. Election Laws, 1923. Secretary of State.
22. New Hampshire. Primary and Election Laws, 1922. Secretary of State.
23. New Jersey. Act to regulate Elections, 1925. Secretary of State.

24. New York. Election Laws, 1924. Secretary of State.
 25. North Carolina. Election Laws, 1919. State Board of Elections.
Amendments to Election Law, 1923. Secretary of State.
 26. North Dakota. Election Laws, 1921. Secretary of State.
Election Laws Supplement, 1923. Secretary of State.
 27. Ohio. Election Laws (contains also the Naturalization Laws), 1924. Secretary of State.
 28. Oklahoma. Primary and General Election Laws, 1921. State Election Board.
 29. Oregon. Election Laws, 1923. Secretary of State.
 30. Pennsylvania. Digest of Election Laws, 1920. Secretary of State.
 31. Rhode Island. Election Laws, 1922. Secretary of State.
 32. South Carolina. Election Laws, 1922. Secretary of State.
 33. Tennessee. Election Laws, 1922. Secretary of State.
 34. Texas. Election Laws, annotated, 1914. Attorney General, 5c.
 35. Utah. Election Laws, 1921. Secretary of State.
 36. Vermont. Laws relating to Elections, 1920. Secretary of State.
 37. Virginia. Election Laws, 1922. Secretary of the Commonwealth.
 38. Washington. Election Laws, 1924. Secretary of State.
 39. West Virginia. Election Laws, 1924. Secretary of State.
 40. Wisconsin. Election Laws, with forms, 1923. Secretary of State.
 41. Wyoming. Election Laws, 1922. Secretary of State.
6. *Other State Executive Publications.*
1. Publicity pamphlets. These may usually be secured from the Secretary of State. The following

states issued pamphlets through that office in 1924: Arizona, California, Illinois, Oregon, Washington.

2. Taxation pamphlets.

- a. State Levy of Taxes. 1923. Oregon Tax Commission.
- b. Receipts and Disbursements of the State. 1924. Wisconsin Tax Commission.
- c. Analysis of 1921 Taxes. Nebraska Department of Finance.
- d. Assessors' Manual, 1925. Minnesota Tax Commission.

3. Civil Service pamphlets.

The Civil Service Commissions of the following states have recently published pamphlets of regulations, etc. California, Colorado, New Jersey, New York. Similar pamphlets of older date may be secured in other states.

4. Reorganization of State Government.

- a. Nebraska. Legislative Reference Bureau, 1923.
 - b. Pennsylvania. Pennsylvania State Association, 1922. 1920 Chestnut St., Philadelphia.
5. Electoral College Procedure, New York. 1925. Secretary of State.
6. Indiana's Record of State Government, 1921-1923. Secretary of State.

B. *Legislative Documents.*

1. *Reports of Committees and Commissions.* These are frequently published. They may usually be secured from members of the legislature, members of the committee or commission, or from the Secretary of State.
2. *Bills.* Most states provide for the publication of bills introduced. They may be secured during the session from members of the legislature.
3. *Legislative Manuals, Blue-books, Registers, etc.* These are usually too bulky for general class distribution. A list of the States publishing books of this nature may be found in Milton Conover, *Working Manual*

of *Original Sources in American Government* (Baltimore, 1924), 111-113. Requests for them should usually be addressed to the Secretary of State. In the following states address the Legislative Reference Bureau: Indiana, North Carolina, Nebraska, Vermont. In Alabama, Georgia, and West Virginia address the Department of Archives and History.

4. *Rules of the Legislature.* These are frequently published separately from the Blue-books, and can be secured from members of the legislature or from the clerk or secretary of the two houses. In a few states they can be supplied by the Secretary of State.
5. *Calendars.* In states where these are published they can usually be secured from the members of the legislature or the clerk of either house. In some states, e. g. Illinois, there is a summary of the bills printed on the calendar.
6. *Legislative Reference Bureaus.* For a list of publications of these bodies see G. A. Weber, *Organized Efforts for the Improvement of Administration* (N. Y. 1919), 327-371.

VII. MUNICIPAL DOCUMENTS.

A. *Municipal Charters.*

1. *Special Charters.*

Pamphlet charters may be secured from the city clerk of most cities. The following are recent publications of this nature.

1. Berkeley, Cal., 1923. City Clerk.
2. Chicago, Ill., Municipal Reference Library.
3. Cleveland, O. 1921. City Clerk.
4. Grand Rapids, Mich. 1923. City Clerk.
5. Los Angeles, Cal. 1924. City Clerk.
6. Lowell, Mass. 1923. City Clerk.
7. Minneapolis, Minn. 1921. City Clerk.
8. New York, N. Y. 1923. Brooklyn Daily Eagle, 75c.
9. Pasadena, Cal. 1922. City Clerk.

2. *Other Organic Laws for Cities.*

Some states publish their statutes in pamphlet form, and in those states the special and general acts applying to cities are obtainable. The following have an especial interest:

1. Laws relating to villages. Michigan Secretary of State, 20c.
2. Proposed Home Rule Amendment. League of Minnesota Municipalities, University of Minnesota, 10c.
3. Model City Charter. National Municipal League, 50c.

B. *Municipal Budgets.*

The following cities have published budgets in the last few years.

1. Baltimore, Md. 1922. Board of Estimate.
2. Chicago, Ill. 1925. Finance Committee of City Council.
3. Cleveland, O. 1924. *Cleveland Record*.
4. Los Angeles County, 1922. Board of Supervisors.
5. Milwaukee, Wis. 1922. Comptroller.
6. Minneapolis, Minn. 1922. Board of Estimate and Taxation.
7. New York, N. Y. 1922. Board of Estimate and Appropriations.
8. Rochester, N. Y. 1923. Mayor.
9. Saint Paul, Minn. 1922. Comptroller.
10. Salt Lake City, 1923. Mayor.
11. San Diego, Cal. 1922. City Clerk.
12. Toronto, Ontario. 1922. Treasury Department.
13. Yonkers, N. Y. 1924. City Clerk.

C. *Municipal Year-books and Manuals.* For a list of these publications in some of the larger cities see: Milton Conover, *Working Manual of Original Sources in American Government* (Baltimore, 1924), 117-119.

D. *Civil Service Rules and Regulations.* The civil service commissions of the following cities have published pamphlets within the past few years. Los Angeles, Minneapolis, New York City, Saint Paul, San Diego.

E. Special Mayor's Reports.

1. Eight years of Progress, Chicago, 1922. Municipal Reference Library, 4c.
2. Detroit's Government: a short history of the services rendered during the year 1921. Mayor.
3. Seven years of Progress, New York City, 1925. Mayor.

F. Other Municipal Documents.

1. Ordinances. In the larger cities these are frequently published in pamphlet form.
2. Rules of the Municipal Court of Chicago, 1924. Municipal Reference Library, 1c.

APPENDIX II

MISCELLANEOUS ORGANIZATIONS PUBLISHING AND CIRCULATING PAMPHLETS ¹

American Association for International Conciliation, 407 W. 117th St., New York, N. Y.

American Civil Liberties Union, 100 Fifth Ave., New York, N. Y.

American Federation of Labor, Washington, D. C.

American Judicature Society, 31 W. Lake St., Chicago, Ill.

Carnegie Endowment for International Peace, 2 Jackson Place, Washington, D. C.

Foreign Language Information Service, 119 W. 41st St., New York, N. Y.

Foreign Policy Association, 9 E. 45th St., New York, N. Y.

Haldeman-Julius Company, Girard, Kansas.

Institute for International Education, 407 W. 117th St., New York, N. Y.

League for Industrial Democracy, Inc., 70 Fifth Ave., New York, N. Y.

League of Nations Non-partisan Association, Inc., 6 E. 39th St., New York, N. Y.

League to Enforce Peace, 130 W. 42d St., New York, N. Y.

Lefax (Inc.), 9th and Sansom Sts., Philadelphia, Pa.

National Association for Constitutional Government, 716 Colorado Bldg., Washington, D. C.

National League of Women Voters, 532 17th St. N.W., Washington, D. C.

National Municipal League, 261 Broadway, New York, N. Y.

National Security League, 17 E. 49th St., New York, N. Y.

¹ Only organizations whose pamphlets have some direct interest for students of American government are listed. Several of these organizations are frankly propagandist. Price lists will be sent on application. For a list of other organizations issuing pamphlets, see L. Dimmitt, *Sources of Pamphlet Material for Libraries* (Univ. of Texas, Bureau of Extension, 1923); reprinted from *Library Journal*, XLVII, 751-756.

Old South Association in Boston, Old South Meeting-House,
Boston, Mass.

Proportional Representation League, 1417 Locust St., Philadel-
phia, Pa.

Simmons-Peckham Co., Inc., 112 E. 19th St., New York, N. Y.

United States Government, Superintendent of Public Docu-
ments, Washington, D. C.

World Peace Foundation, 40 Mt. Vernon St., Boston, Mass.

APPENDIX III

FINDING LISTS FOR CURRENT DOCUMENTARY AND OTHER PAMPHLET MATERIAL

Monthly Catalogue of United States Public Documents. Issued by the Superintendent of Documents. Lists practically all important United States government publications.

Monthly Check List of State Publications. Issued by the Division of Documents, Library of Congress. Contains all the principal state publications.

News Notes of California Libraries. Published quarterly by the California State Library. Each issue contains a department of "California State Publications Received."

Check List of Minnesota Public Documents Issued During ———. Published monthly by the Minnesota Historical Society. Contains a full list of all the state publications of Minnesota.

Check List of Wisconsin Public Documents Issued During ———. Published monthly by the Wisconsin Historical Society. Contains a full list of all the state publications of Wisconsin.

Monthly List of New York City Publications. Issued as part of "Municipal Reference Library (New York City) Notes." Lists all publications of New York city and some of the publications of New York State. A few of the more important reports and surveys from other cities are also noted.

Bulletin of Public Affairs Information Service. Weekly, with quarterly and yearly cumulations. Published at 11 W. 40th St., New York, N. Y. Contains an excellent classified list of pamphlet and other publications of public interest. Pamphlets published privately are listed as well as the more important municipal, state, and federal documents.

American Political Science Review. Each quarterly issue contains a department entitled "Recent Publications of Political Interest." The section devoted to "Government Publications" lists many of the more important official publications of both the United States government and the states.

- National Municipal Review.* Each monthly issue contains a department of "Books and Publications" with a section on "Recent Pamphlets and Reports." A few of the most important pamphlet publications are reviewed with explanatory and critical comments. Items deal largely with municipal affairs.
- American City.* Each monthly issue contains a department entitled "Municipal and Civic Publications" which lists with critical comment a great many documentary publications relating to municipal government, including a number of city reports.
- Bulletin of the Public Library of Boston.* Each quarterly issue contains a department of books "Recently Added" in which are indexed topically a large number of United States public documents.
- Congressional Digest.* Each monthly issue contains a department entitled "Recent Government Publications of General Interest." No special attempt is made to include pamphlets of a political nature. Only United States government publications are listed.
- Book Review Digest.* Published monthly, with quarterly and annual cumulations. The monthly issues frequently contain a "List of Documents for use in Smaller Libraries." This is a well selected short list, but there is no special attempt to include material of a political nature.

TABLE OF CASES

	page
Bailey v. Drexel Furniture Co., 259 U.S. (1922), 20.....	158
Baltimore & O. RR. Co. v. Interstate Commerce Commission, 221 U.S. (1911), 612	185
Brolan v. United States, 236 U.S. (1915), 216.....	196
Buttfield v. Stranahan, 192 U.S. (1904), 270.....	196
California v. Central Pacific RR. Co., 127 U.S. (1888), 1.....	186
Calvin's Case, 7 Coke Rep. (Exch. 1608), 1.....	57
Caminetti v. United States, 242 U.S. (1917), 470.....	185, 191, 197
Carlisle v. United States, 16 Wallace (U.S. 1872), 147.....	61
Champion v. Ames, 188 U.S. (1903), 321.....	191, 195, 197
Child Labor Tax Case, 259 U.S. (1922), 20.....	158
Clark Distilling Co. v. Western Maryland RR. Co. 242 U.S. (1917), 311	191
Coe v. Errol, 116 U.S. (1886), 517.....	193
Cummings v. Chicago, 188 U.S. (1903), 410.....	119
Delaware, L. & W. RR. Co. v. Yurkonis, 238 U.S. (1915), 439.....	192
Doe v. Jones, 4 Term Rep. (K.B. 1791), 300.....	57
Dred Scott v. Sandford, 19 Howard (U.S. 1857), 393.....	59, 368
Duplex Printing Press Co. v. Deering, 254 U.S. (1921), 443.....	185
Elk v. Wilkins, 112 U.S. (1884), 94.....	55
Flint v. Stone Tracy Co., 220 U.S. (1911), 107.....	162, 196
Ft. Leavenworth RR. Co. v. Lowe, 114 U.S. (1885), 525.....	117
Gibbons v. Ogden, 9 Wheaton (U.S. 1824), 203.....	174, 194
Gibson v. United States, 166 U.S. (1897), 269.....	118
Gray v. United States, 21 Ct. Claims (1886), 340.....	119
Green, In re., 52 Fed. Rep. (1892), 104.....	193
Hammer v. Dagenhart, 247 U.S. (1918), 251.....	157, 189
Hipolite Egg Co., v. United States, 220 U.S. (1911), 45.....	191, 196
Hoke v. United States, 227 U.S. (1913), 308.....	191, 197
Holmes, Ex parte, 12 Vt. (1840), 631.....	120
Holmes v. Jennison, 14 Peters (U.S. 1840), 540.....	120
Illinois Central Case, 245 U.S. (1918), 493.....	184, 185
Increased Rates, 1920, 58 I.C.C. (1920), 220.....	188
Inglis v. Sailors' Snug Harbor, 3 Peters (U.S. 1830), 99.....	60
Intra-State Rate Case, 257 U.S. (1922), 563.....	181, 189
Intra-State Rates within Texas, 60 I.C.C. (1921), 421.....	188
Kentucky v. Dennison, 24 Howard (U.S. 1860), 66.....	48, 50-51
Kidd v. Pearson, 128 U.S. (1888), 1.....	193, 194
Lake Shore & Michigan RR. Co. v. Ohio, 165 U.S. (1897), 365.....	119
Lane County v. Oregon, 7 Wallace (U.S. 1868), 71.....	194
Luxton v. North River Bridge Co., 153 U.S. (1894), 525.....	186

	page
McCray <i>v.</i> United States, 195 U.S. (1904), 27.....	161, 162, 196
M'Culloch <i>v.</i> Maryland, <i>et al.</i> , 4 Wheaton (U.S. 1819), 316.....	30, 194
Marbury <i>v.</i> Madison, 1 Cranch (U.S. 1803), 137.....	41, 11
Meade <i>v.</i> United States, 2 Ct. Claims (1866), 224.....	118
Minnesota Rate Cases, 230 U.S. (1913), 352.....	184, 185, 186
Montana Rates and Fares, 77 I.C.C. (1923), 141.....	189
 New York <i>v.</i> Miln, 11 Peters (U.S. 1837), 102.....	 194
 Pennsylvania RR. Co., <i>v.</i> International Coal Mining Co. 230 U.S. (1913), 184	 185
Poole <i>v.</i> Fleegeer, 11 Peters (U.S. 1837), 185.....	120
Postnati, Case of the, 7 Coke Rep. (Exch. 1608), 1.....	57
Pumpelly <i>v.</i> Green Bay Co., 13 Wallace (U.S. 1871), 166.....	118
 Railroad Commission of Wisconsin <i>v.</i> Chicago, B. & Q. RR. Co., 257 U.S. (1922), 563	 181, 189
 Scranton <i>v.</i> Wheeler, 179 U.S. (1900), 141.....	 118
Second Employers' Liability Cases, 223 U.S. (1912), 1.....	185
Shreveport Case, 234 U.S. (1914), 342.....	182, 184, 185
Slaughter House Cases, 16 Wallace (U.S. 1873), 36.....	59, 194
Southern RR. Co., <i>v.</i> United States, 222 U.S. (1911), 20.....	185
State <i>v.</i> Jones, 66 Ohio St. (1902), 453.....	331
 Tailor <i>v.</i> Taintor, 16 Wallace (U.S. 1872), 366.....	 51
Thrasher's Case, Ex. Doc. H.R. No. 10, 1st Sess. 32d Cong. (1851).....	61
 United States <i>v.</i> Doremus, 249 U.S. (1919), 86.....	 162
United States <i>v.</i> Wong Kim Ark, 169 U.S. (1898), 649.....	56
 Veazie Bank <i>v.</i> Fenno, 8 Wallace (U.S. 1868), 533.....	 160, 161, 162, 196
Virginia <i>v.</i> Tennessee, 148 U.S. (1893), 503.....	120
 Weber <i>v.</i> Freed, 239 U.S. (1915), 325.....	 196
Weeks <i>v.</i> United States, 245 U.S. (1918), 618.....	197
Wilson <i>v.</i> Shaw, 204 U.S. (1907), 24.....	186
Wichita Falls & Southern Passenger Fares, 83 I.C.C. (1923), 603.....	187

INDEX

- Adams, J., "Midnight appointments," 41-42
- Administration, Advisory Boards, 269-272
 - Appointments, 273
 - Civil Service Examination, 112-115
 - Civil Service Rules, 111
 - Departments (Illinois), 266
 - Finance Department, 277-279
 - Illinois Civil Administrative Code, 265-282
 - Maryland Budget, 282-288
 - Municipal, 348-351
 - Need of Consolidation, 265-266
 - Officers, 267-269
 - Organization of Departments, 365
 - Powers of Boards, 272-273
 - Public Health Department, 279-281
 - Purchasing Methods, 275
 - Registration and Education Department, 281-282
 - Regulations, 272-277
 - Reorganization, 365, 376
 - Territorial, 366
- Admission to Statehood, Congressional Limitations, 99-108
 - Process of, 99-100
- Advisory Boards, see Boards, Advisory.
- Agreements of States, Congressional Control, 119-120
- Agricultural Interests, Lobby, 147
- Amendment of National Constitution, Forms, 62-65
 - Joint Resolution for, 63-64
 - Method, 17
 - Proposals, 65-69
 - Proposed Change in Method, 68
- Amendment of State Constitutions, Initiative and Referendum, 246-249
- American Federation of Labor Lobby, 147
- American Legion, Lobby, 149
- Andros, Governor of New England, 4
- Anti-Saloon League, Lobby, 148
- Anti-Trust Laws, Pamphlets, 366
- Appointment Power, City Manager, 344, 349
 - Governor, 273
 - Mayor, 338-340
 - President, 109-111
- Apportionment of Representatives, Act of 1911, 126-128
- Appropriations, see Budget.
- Arizona, Admission, 98-99, 108
 - Publicity Pamphlet, 246-249
- Articles of Confederation, 363
- Assessment, Cost, 293-295
 - Equalization, 295-296
 - Methods, 289-296
- Attorney General, Opinion of, 116-121
- Australian Ballot, 310
- Ballot, Forms, 320-330
 - Initiative and Referendum (Massachusetts), 244-245, 326-327
 - Initiative and Referendum (California), 328-329
 - Numbered stub, 321, 328-329
 - Office Block Type (Massachusetts), 321, 326-327
 - Party Column Type (Indiana), 320, 324-325
 - Primary (South Dakota), 320, 322-323
 - Proportional Representation, 229-231
 - Recall, 321, 330
 - Rotation of Names, 230-231
- Bank, First United States, 30-31
- Bank, Second United States, Power of Congress to Create, 32-39
 - Power of States to Tax, 39-40
 - Reason for, 31
 - State Opposition, 31
- Banknotes, State, Power of Congress to Tax, 160
- Beard, C. A., Opinion of "Federalist," 11
- Berkeley, Cal., Charter, 344-361
- Bicameral Legislature, Amendment to Abolish, 246-249
- Blanket Injunction, in Shopmen's Strike, 151
- Blue-books, Legislative, 367-377

- Boards, Advisory, List of in Illinois,** 269-270
 Powers, 272-273
 Qualification of Members, 270-272
Budget and Accounting Act, 163
Budget, Bureau of, Assisting Agencies, 171-173
 Difficulty of Securing Economy, 170
 Unpopularity, 164-166
 Work, 163-173
Budget, City Manager, 359-360, 378
 Preparation of, Illinois, 278-279
 Maryland, 282
 United States, 166-170
 State, 371-372
 Tables from Maryland, 283-288
Bunau-Varilla, P., Minister from Panama, 86-89
Business Organization of the Government, 164

Cabinet, Time of Meeting, 86
Calendar, Congressional, "Consent," 137, 144
 "House," 137, 141
 Object of, 137
 "Private," 137, 143
 Special Orders, 138
 Unfinished Business, 138
 "Union," 137, 140
Calendar, State Legislatures, 377
California, Ballot, 321, 328-329
 Publicity Pamphlet, 246
Campaign Expenditures, Corporation Contributions, 318-319
 Illegal, 314-315
 Legal, 311-312, 316-317
 Maximum Permitted, 313
 Minnesota Act Limiting, 311-320
 Statement to be Filed, 317-318
Campaign Literature, Must State Author, 312
Campaigning, Illegal on Election Day, 315-316
Canada, Can Lease Land in United States, 117-118
Caucus, Congressional, Rules of Democratic, 135-136
Census Bulletins, 365
Central Count of Ballots, 231-232
Certificates of Literacy, for Voting, 199-206
Chairman, Party, see State Party Chairman.
Charter, Adoption, 336
 Amendments, 344-345
 Berkeley, 344-361
 Commission Type, 340-342, 344-361
 Charter, Disadvantages of Special, 335
 Home Rule, 332-334
 Massachusetts Bay, 363
 Mayor and Council Type, 337-340
 Optional, 335-344
 Uniform, 332
Charters, in Pamphlet Form, 377
Checks and Balances, see Separation of Powers.
Child Labor, Power of Congress, 189-197
Child Labor Act, Provisions of First, 189-190
 Provisions of Second, 157
Child Labor Amendment, Status of Ratification, 66
 Text, 66-67
Child Labor Tax Case, 157-163
Chinese, Exclusion, 56
 Cannot Be Naturalized, 61
 Citizenship of American Born, 56
Cities, Charters, 335-361
 Classification, in New York, 202
 in Ohio, 331
 Home Rule, 332-334
 Inequalities of Wards, 226
 Finance, 359-360
 Government by Commission, 340-342
 Manager, 340-342, 344-346
 Optional Charters, 335-344
 Powers, 351-359
 Types of Government, 337-344
City Manager, Duties of, Berkeley, 348-351
 Massachusetts, 343-344
Citizenship, Eligibility of Chinese, 56-61
 English Law, 57
 of Indians, 55
 of Negroes, 59
 Roman Law, 58
Civil Service, Changes in Rules, 111-112
 Efficiency, 173
 Extension of Merit System, 111-112
 Lobbying, 147
 Pamphlets, 365-366, 376, 378
 Sample Examinations, 112-115
Clayton-Bulwer Treaty, Abrogation, 86-87
Classification of Cities, New York, 202
 Ohio, 331
Cleveland, Ohio, Charter, 227-228
 Election of Council, 227-233
 Tally Sheet of Election, 234-235
Code Napoleon, Citizenship under, 58

- Colby, B., Proclamation of Nineteenth Amendment, 64-65
- Colonial Governments, Commission to Governor, 3-9
- Colonial Governor, see Governor, Colonial.
- Colonial Laws, Disallowance by King, 6
- Colorado, Legislature, Call for Special Session, 263-264
- Columbia, Rights to Panama Canal, 87
- Commerce, see Interstate Commerce.
- Commission, to Colonial Governor, 3-9
- Commission Government, 340-342
- Committee of Whole, in House of Representatives, 133
- Committee on Credentials, in Nebraska Convention, 214
- Committees, in House of Representatives, 130-131
- Joint Rules in Massachusetts, 252-255
- Party, see State Party Committees, National Committees.
- Reports as Evidence in Courts, 185
- Rule Forcing Report, 134
- Concurrent Resolution, Counting Electoral Vote, 77-78
- Confederation, Articles, 363
- Conference Committees, Calendar of Bills Referred, 139
- Disadvantages, 249
- Report, 84
- Confucius, on Government, 216
- Congress, Amendment Changing Sessions, 67
- Conference Report, 84
- Counting of Electoral Votes, 76-84
- Interpretation of Acts, 185
- Joint Resolution for Nineteenth Amendment, 63, 64
- Limited Powers, 32-44
- Lobbies at, 145-149
- Police Power, 189-197
- Power to Control Jurisdiction of Courts, 42-43
- Power to Control Naturalization, 61
- Power to Control State Agreements, 119-120
- Power to Create Bank, 32-39
- Power to Create Corporations, 38
- Power to License Steamboats, 179
- Power to Prevent Discrimination, 184
- Congress, Power to Regulate Child Labor, 189-197
- Power to Regulate Currency, 161
- Power to Regulate Foods and Drugs, 191, 196
- Power to Regulate Interstate Commerce, 174-179
- Power to Regulate Lotteries, 191
- Power to Regulate Navigation, 118, 175-177
- Power to Regulate Railroad Rates, 185-187
- Power to Regulate White Slave Traffic, 191, 197
- Power to Tax Child Labor, 157-163
- Power to Tax Corporations, 162, 196
- Power to Tax Narcotics, 162
- Power to Tax Oleomargarine, 161, 196
- Power to Tax State Bank Notes, 160, 196
- Special Session of (1917), 198
- see also, House of Representatives, Senate.
- Connecticut, Legislative Districts, 225
- "Consent Calendar," in House of Representatives, 137, 144
- Constitutional Convention (Massachusetts, 1919)
- Act Calling, 208-211
- Election of Delegates, 207
- Initiative and Referendum Debates, 236
- Nomination of Delegates, 209
- Powers, 210-211
- Reasons for, 208
- Work, 208
- Constitutional Convention (Nebraska, 1919)
- Election of Delegates, 212
- Election of President, 215-216
- Election of Temporary Officers, 213-214
- Election of Vice-President, 217
- Oath of Members, 215
- Organization, 213-219
- Reasons for, 211-212
- Report of Credentials Committee, 214
- Rules Committee, 218
- Constitution, Nature of a Written, 43-45
- Will not Prevent Tyranny, 18
- Constitution (National), Amendment of, see Amendment of National Constitution.
- Construction of Clauses, 33-34, 57, 194

- Constitution (National), Fourteenth Amendment**, 56-57, 59
 Implied Powers, 33-34
 Interpretation, 33-34, 57, 194
 Limitations in, 102-103, 159
 Meaning of "Commerce Among the States," see Interstate Commerce.
 Meaning of "Fugitive from Justice," 52-54
 Meaning of "Necessary and Proper," 35-38
 Nineteenth Amendment, 62-65
 Paramount Law, 44-47
 Ratification, 9-11, 15
 Rendition of Fugitives under, 47
 Tenth Amendment, 33, 194
Constitution (State), Massachusetts, 207
 Nebraska, 211-212
 Pamphlets, 369-371
Convention, Constitutional, see Constitutional Convention.
Convention, National Nominating, Apportionment of Delegates, 73
 Call for, 72-76
 Contested Seats, 75-76
 Rules for Election of Delegates, 73-76
Coördinator, Work of Federal, 171
Corporations, Contributions to Campaign Funds, 318-319
 Power of Congress to Create, 38
 Power of Congress to Tax, 162, 196
Corrupt Practices, Forms, 310
 Minnesota Act Prohibiting, 311-320
 Penalty for, 319-320
Council (Municipal), in Berkeley, 347, 351-360
 in Commission Government, 340-342
 in Manager Government, 342-344, 347, 351-360
 in Mayor and Council Government, 337-340
Council (Colonial), Appointed by Governor, 5
 Powers, 9
County Party Committee, 309
Credentials, Committee on, 214
Cullom, S. M., on Interstate Rendition, 48-55
Currency, Power of Congress to Control, 161
Dalzell, J. C., on Rules of House, 128
Daugherty, H., Secured Shopmen's Injunction, 151
DeLolme, on the Executive, 29
Debate, Rules of in House, 131
Declaration of Independence, 363
Declaration of War with Germany, 198
Democratic Party, Caucus Rules in Congress, 135-136
Departments, Administrative, 266-270
Diplomatic Representatives, Children Not Citizens, 60
 Recognition of Panamaian, 86-89
Direct Legislation, see Initiative and Referendum.
Direct Primary Ballot, 220, 222-223
Dissenting Opinion, of Holmes, 195-197
 in Interstate Commerce Commission, 189
Districts, Inequality of Representative, 219-226
Divorce, Amendment for Uniform Law, 67-68
Dongan, Commission as Governor, 3-9
Donnelly, H. J., Sr., on Postal Fraud Orders, 121-123
Economy, Difficulty of Securing Governmental, 170
 Federal Coördinator's Work, 171
 General Accounting Office's Work, 172
 Uniform Specifications, 172-173
Economy and Efficiency Committee (Illinois), 265
Education, Department of (Illinois), 281-282
Election, Ballots, 320-330
 Corrupt Practices Regulations, 310-320
 Laws Available in Pamphlet Form, 373
 Municipal, 345
 Proportional Representation, 226-235
Electoral College, Counting of Vote, 76-84
 Madison on, 16
 No Meetings of All Electors, 76
 Table of Vote (1925), 81-82
Electorate, Literacy Tests, 199-206
Eminent Domain, Compensation Required, 118-119
Equalization of Assessments, 295-296
Equal Rights Amendment, Text, 68
Esch-Cummins Law, see Transportation Act of 1920.
Examinations, Sample Civil Service, 112-115

- Executive, Advantage of a Single, 23-30
 Breaches of Constitution, 22
 Danger of Dissent in, 25-26
 DeLolme on, 29
 Distinguished from Legislature, 19-20
 Disadvantage of Council, 27-29
 Elected *vs.* Hereditary, 28-29
 Less Dangerous than Legislature, 20
 Means of Destroying Unity, 24-25
 Necessity of Energy in, 23
 New York's Experience, 28
 Pamphlet Documents Available, 365-366
 Qualities of a Desirable, 23-24
 Roman Experience, 25, 30
 see also Governor, Mayor, President.
- Extradition, see Rendition, Interstate.
- Farmers, Lobby of, 147
- Federal Government, Madison on, 14-18
 Nature, 14-15
 see also National Government.
- "Federalist," Authorship, 9-10
 Influence, 10-11
 Object of, 10
 Numbers One & Two, 364
 Number Thirty-nine, 12-18
 Number Forty-eight, 18-23
 Number Seventy, 23-30
- Federalist Party, 11, 41
- Finance Department (Illinois), 277-279
 Municipal, 359-360
 see also Taxes, Budget, Currency.
- Ford, P. L., Edition of "Federalist," 12
- "Form Books," Legal, 296
- Fourteenth Amendment, Defines Citizenship, 56-57
 Object of, 59
- Franklin, B., Plan of Union, 363
- Fraud Order, Memorandum for Issuing, 124-125
 Procedure in Issuing, 122
 Text of Postal, 123-124
- Fugitives, Duty of Governor to Return, 47-52
- Gentlemen's Agreement, Japan's Recognition of, 90, 97
- Germany, Declaration of War with, 198
- Gerrymander, Congressional Districts, 126
- Governor (Colonial), Appointed Council, 5
 Oath, 4-5
 Powers, 4-9
 Succession, 8-9
- Governor (State), Budget Making by, Illinois, 279
 Maryland, 282-289
 Call for Special Legislative Session, 62, 263-264
 Power of Appointment, 273
 Power to Refuse Rendition, 53
 Government, Functions of, 216
 Grand Jury, 297
- Gunter, J. C., Call for Special Legislative Session, 263-264
- Habeas Corpus, Purpose of Writ, 296
 Form of Writ, 299
- Hamilton, A., Co-author of "Federalist," 9
 On the Executive, 23-30
- Hare System, see Proportional Representation.
- Hayden, J. G., List of Washington Lobbies by, 145-149
- Historical Documents in Pamphlet Form, 363-364
- Holland, Called a Republic, 12
- Holmes, O. W., Jr., Dissent in First Child Labor Case, 195-197
- Home Rule, Ohio Amendment, 331-334
- "House Calendar," 137, 141-142
- House of Representatives, Apportionment of Members, 126-128
 Calendars, 137-144
 Can Force Committees to Report, 134
 Committee of Whole House, 133
 Committees, 130-131
 Democratic Caucus, 135-136
 Districts Rearranged, 220
 Districts to be Compact, 127
 Districts Unequal, 219-223
 Efforts to Reduce Size, 126
 Election of Members at Large, 128
 Election of President by, 16
 Gerrymander of Districts, 126
 Introduction of Bills, 132-133
 Motions in, 132
 National Character, 15
 Present Size, 126
 Quorum Rule, 131
 Rules of Debate, 131
 Rules, Text of, 128-134
 Rules, Suspension of, 133
 Speaker's Duties, 129-130
 Vote for Members, 222

- Illinois Civil Administrative Code, Text, 265-282
 Immigration, Japanese, 90, 97
 Implied Powers, Doctrine of, 33-34
 Independence, Declaration of, 363
 Indiana Ballot, 320, 324-325
 Indians, Citizenship, 55, 60
 Indictment, Purpose, 297
 Form, 299-300
 Inequality of Representative Districts, 219-227
 Initiative and Referendum, Ballot, 244-245, 326-329
 Definition, 237
 Discussion of in Massachusetts Convention, 236
 Emergency Measures, 242
 Excluded Matters, 237-238, 243
 Massachusetts Provision, 237-245
 Method of Use, 238-242, 243-245
 Publicity Pamphlet, Arizona, 246-249
 Massachusetts, 244-245
 Public Opinion Law, 236
 Injunction, Shopmen's Strike, 150-157
 Inspection Laws, Power of States to Enact, 194
 Instructions to Colonial Governor, 3
 Interim Committees, 289
 Interpretation, of Constitution, 194
 of Statutes, 185
 Interstate Agreements, Congressional Control, 119-120
 Interstate Commerce, Acts, 181, 366
 Discrimination against, 185-187, 189
 Inspection Laws, 194
 Meaning of Phrase, 174-179, 192-193
 National Control, 174-197
 Navigation, 175-176
 Passenger Traffic, 178-179, 187
 Police Regulations, 189-197
 Railroad Rates, 180-189
 Relation to Intra-State, 176-177, 180-187
 Scope, 176-178
 Shopmen's Strike, 151
 States Cannot Burden, 185-187, 189
 Interstate Commerce Commission, Opinion, 187-189
 Power over Sleeping Car Rates, 188
 Power to Fix Railroad Rates, 180-187
 Procedure of, 187
 Interstate Extradition, see Rendition, Interstate.
 Intra-State Rates, Federal Control over, 180-189
 Japan, Commercial Treaty with, 89-98
 Immigration from, 90, 97
 Jay, J., co-author of "Federalist," 10
 Jefferson, T., "Manual of Rules," 128
 View on Virginia Legislature, 20-21
 Joint Committees (Massachusetts), Importance, 250
 Rules, 252-255
 Journal, of Democratic Caucus, 136
 of House of Representatives, 129
 Judicial Documents, 296-300
 Judicial Review, Power of, 43-47, 159
 Taft's Views on, 103
 Judiciary, Colonial, 6-7
 Control over Congress, 17
 Forms used, 296-300
 Function, 45
 Need for Independence, 103-104
 Popular Election, 105-106
Jus Sanguinis, Citizenship rule, 58
Jus Soli, Citizenship rule, 58
 Justice, Department of, 122
 Labor, Lobby at Washington, 147
 League of Nations, Covenant, 368
 Legislation, Need of Study, 256
 Legislative Reference Library, in Illinois, 265
 Necessary Features, 257-259
 Origin of Work, 255-256
 Publications, 377
 Services Rendered, 225
 Legislature, Danger of Encroachment, 19-20
 Distinguished from Executive, 26
 Superiority over Executive, 20
 see also Congress, Legislature (State), Council, House of Representatives.
 Legislature (Colonial), in New York, 3-4
 Disallowance of Laws, 6
 Legislature (State), Calendars, 377
 Call for Special Session, 263-264
 Inequality of Districts, 224-225
 Pennsylvania, 21-22
 Power over Cities, 331-334
 Reference Libraries, 255-260
 Rules in Massachusetts, 249-255
 Special Sessions, 62, 263-264
 Vote for Members, 224-225
 Virginia, 20-21
 Wisconsin Lobbying Law, 259-262
 Libraries, Legislative Reference, see Legislative Reference Libraries.

- Lincoln, A., on Admission of Nevada, 109-111
- Literacy Tests, Directions for Giving, 202-204
 Directions for Taking, 204
 How Prepared (New York), 200
 Key for Scoring Papers (New York), 206
 Regulations, 200-202
 Required in New York, 199
 Sample Test (New York), 204-205
 When held, 202
- Liquor Interests Lobby, 148-149
- Lobbyists, Character of at Washington, 145
 Georgia Law to Prohibit, 259
 Legislative Reference Library to Act as, 257
 Required to State Expenses in Wisconsin, 262
 Required to Register, 261
 Stronger in Bicameral Legislature, 249
 at Washington, 145-149
 Wisconsin Law Regulating, 259-262
- Lord, H. M., on Budget System and Economy, 164-173
- Lotteries, Act Prohibiting, 121
 Power of Congress over, 191
- Local Government, see Cities, Manager, Mayor, Council.
- McCarthy, C., Legislative Reference Work, 255
 on Methods used, 256-259
- Madison, J., Account of "Federalist," 9-10
 Co-author of "Federalist," 10
 on Separation of Powers, 18-23
- Magna Carta, 363
- Manager (City), in Berkeley, 348-351
 in Massachusetts, 342-344
- Mandamus, Right of Supreme Court to Issue, 42-43
- Manufacturing, Not Commerce, 192-193
- Manufacturers' Associations Lobby, 146
- Mann Act, Constitutionality, 191, 197
- Marriage and Divorce, Amendment for Uniform Law, 67-68
- Marshall, J., Appointed Chief Justice, 41
 Implied Powers, 32-39
 on Power of State to Tax, 39-41
 on Power over Interstate Commerce, 175-179
- Marshall, J., on Power of Judicial Review, 43-47
- Martial Law, Declared by Colonial Governor, 8
- Maryland, Attempt to Tax United States Bank, 31
 Budget Procedure, 282
 Sample Budget Forms, 283-288
- Maryland House of Correction, Budget Estimates, 286-288
- Massachusetts, Adoption of Initiative and Referendum, 236
 Ballot, 321, 326-327
 Body of Liberties, 363
 Constitutional Convention, 1919, 207-211
 Initiative and Referendum Provision, 237-245
 Joint Committees, 252-253
 Optional Charter Law, 335-344
 Public Opinion Law, 236
 Rules of General Court, 249-255
- Massachusetts Bay Charter, 363
- Mayor, in Berkeley, 347-348
 in Manager Cities, 343
 in Mayor and Council Cities, 337-340
- Merit System, Extension, 111-112
 Sample Examination, 112-115
 see also Civil Service.
- Message, Veto, 98-108
- Messages, Presidential, 364
 Governors', 371
- Military, Controlled by Colonial Governor, 7-8
- Mining, Is Not Commerce, 192
- Migration, Power of Congress over, 178
- "Monday Lunch Club," 145
- Monopolies, of Steam Navigation, 174
- Municipal Home Rule, Ohio Provision, 332-334
- National Chamber of Commerce Lobby, 146
- National Committee, Issues Call for Convention, 72
- National Committeeman, 308
- National Convention, Apportionment of Delegates, 73
 Call, 72-76
 Contested Seats, 75
 Rules for Election of Delegates, 73-76
- National Government, Acts on Individuals, 16
 Limited Powers, 16, 32
 Supremacy, 33

- Nationality, Allegiance as Basis of, 57
 see also Citizenship.
 Narcotic Drug Act, 162
 Naturalization, Act for Collective, 55
 Forms, 365
 Laws, 367
 Power of Congress, 61
 Navigation, Is Commerce, 175-176
 Control of Secretary of War, 119
 Power of Congress, 118
 Navy League Lobby, 149
 Nebraska Constitutional Convention (1919), Organization, 211-219
 "Necessary and Proper," Meaning, 33-38
 Negroes, Citizenship, 59
 Nevada, Admission, 109-111
 New, H. S., on Use of Mails for Fraud, 122
 New England Confederation, 363
 New Jersey, Recall Ballot, 321, 330
 New York, Literacy Tests, 199-206
 Tax Assessment, 289-296
 Nineteenth Amendment, Joint Resolution Proposing, 63, 64
 Proclamation of, 64-65
 States Ratifying, 65
 Tennessee Ratification Resolution, 62-64
 Text, 63, 64
 Nobility, Prohibition of Titles, 14
 Nomination, Form of in Cleveland, 228-229
 see also National Convention.
 Norris Amendment, Text, 67
 Northwest Ordinance, 363
 Oath, of Colonial Governor, 4-5
 of Supreme Court, 46-47
 of Constitutional Convention, 215
 Office Block Ballot, 321, 326-327
 Ohio, Municipal Home Rule, 331-334
 Oleomargarine, Power of Congress to Tax, 161-162, 196
 "Opinions of Attorney General," Nature, 116-121
 Optional Charter Law, 335-344
 Ordinances, Available in Pamphlet Form, 479
 Pamphlets, Agencies Circulating, 380-381
 Finding Lists for Current, 382-383
 List of on American Government, 363-379
 Panama, Recognition, 86-89
 Revolution, 87
 Pardon, Power of Colonial Governor, 7
 Parliamentary Law, Development, 128
 Party Column Ballot, 320, 324-325
 Party Rules, Pennsylvania, 301-310
 Purpose, 301
 Parties, Democratic, 135-136
 Federalist, 11, 41
 Platforms, 369
 Republican, 72-76, 301-310
 Patronage, President's, 109-111
 Pennsylvania, Legislature, 21-22
 Party Rules, 301-310
 Picketing, Prohibited by Shopmen's Injunction, 154-155
 Platforms, Political, in Pamphlet Form, 369
 Poland, Called a Republic, 12
 Police Power, of Congress, 189-197
 of Colonial Governor, 5
 and Interstate Commerce, 189-197
 Nature, 194
 of States, 193-195
 Political Parties, see Parties.
 Political Platforms, in Pamphlet Form, 369
 Popular Government, Taft's Views, 101
 Postal Clerk Examinations, 112-115
 Post Office Department Fraud Orders, 121-125
 President, Attorney General and, 116
 Budget Bureau assists, 163
 Calendar of, 85
 Electoral College, 76-84
 Law of Succession, 70-71
 Madison on Election, 16
 Messages and Addresses, 364-365
 Order Extending Merit System, 111-112
 Panama Recognized by, 86-89
 Patronage Power, 109-111
 Power of Appointment, 109-111
 Powers in War Time, 198
 Power over Legislation, 109-111
 Treaties Proclaimed, 90-97
 Veto Message, 98-108
 Presidential Succession Act of 1886, 70-71
 Primary Ballot of South Dakota, 320, 322-323
 "Private Calendar," in House of Representatives, 137, 143
 Prohibition, Lobby at Washington, 148-149
 Propaganda Agencies, 145-149, 380-381
 Proportional Representation, Form of Ballot, 229-231
 Method of Determining Quota, 232
 Nominations, 228-229

- Proportional Representation, Provision for in Cleveland, 227-233
 Reasons for, 226-227
 Recount Provisions, 233
 Rules for Counting Ballots, 231
 Tally Sheet, 234-235
- Public Health Department (Illinois), 279-281
- Public Opinion Law, 236
- Public Utilities, Supervised by City Manager, 349
 Lobby in Washington, 147
- Publicity Pamphlets, Extent of Use, 246
 Extract from Arizona (1916), 246-249
 Massachusetts Provision, 245
 Recent Publication, 375
- Pure Food and Drug Act, Constitutionality, 191, 196
- Quorum, Ruling of Reed, 131
- Racial Groups, Lobbies, 148
- Railroads, Fair Return, 182
 Rates Must Be Uniform, 180-187
 Washington Lobby, 146-147
- Railway Postal Clerk Examinations, 112-115
- Recall, Ballot, 321, 330
 Berkeley Provision, 346-347
- Recall of Judges, Arguments for, 106-108
 Arizona Provision, 98
 Dangers of, 104-105
 Nature, 100
 Relation to Popular Election, 105-106
 Taft's Veto Message, 98-108
- Recognition of Panama, 86-89
- Recount of Ballots under Proportional Representation, 233
- Reference Libraries, Legislative, see Legislative Reference Libraries.
- Referendum, see Initiative and Referendum.
- Registration Department (Illinois), 281-282
- Rendition, Interstate, Congressional Provision for, 47
 Constitutional Provision for, 47
 Cullom's Opinion, 48-55
 Moral Obligation, 48-49
- Report of State Joint Committee on Taxation, 289-296
- Representation, Inequality of, in Cities, 226
 in House of Representatives, 222-223
- Representation, in State Legislatures, 224-225
- Representatives at Large. Provision for, 128
- Republican Party, Apportionment of Convention Delegates, 73
 Call for National Convention, 72-76
 Eligibility of Officers, 302-303
 Organization of in Pennsylvania, 302
 Pennsylvania State Committee, 303-305
 Rules in Pennsylvania, 301-310
 State Chairman, 305-306
- Republican Government, Madison on, 12-14
- Reservation to Treaty, Form of, 97
- Responsibility, Need of Concentration, 27-28
- Richards' Primary Ballot, 320, 322-323
- Roosevelt, T., Merit System Extended, 111-112
 Recognized Panama, 86-89
- Rotation of Names on Ballots, 230-231
- Rules, of Democratic Caucus, 135-136
 of House of Representatives, 128-134
 of Massachusetts General Court, 249-255
 of Nebraska Constitutional Convention, 218
 of Republican Party of Pennsylvania, 301-310
 of State Legislatures in Pamphlet Form, 377
- Rural Free Delivery Carriers, under Merit System, 111-112
- Self-esteem, a Political Force, 26
- Senate, Federal Character, 15
 Reservation to Treaty, 97
 Roll Call, 78-79
- Separation of Powers, in Arizona, 19n
 Distinction between Legislative and Executive, 26
 Madison on, 18-23
 in Massachusetts, 18-19n
 Taft on, 102-103
- Sessions of Congress, Amendment to Change, 67
- Shopmen's Strike, Causes, 150
 Little Violence, 151
 Text of Injunction Issued, 151-157
- Short Session, Amendment to Abolish, 67
- Sleeping Car Rates, 188-189

- South Dakota Primary Ballot, 320, 322-323
- Solicitor General, Postal Fraud Investigations, 122
- Special Sessions of Legislature, Call for, 263-264
- Ratified Nineteenth Amendment, 62
- Specifications Board, Work, 172
- Speaker of House of Representatives, Duties, 129
- Power of Recognition, 131
- Power to Vote, 129
- Refusal to Put Dilatory Motions, 132
- State Bank Notes, Taxation by Congress, 160, 196
- State Constitutions, in Pamphlet Form, 369-371
- State Party Chairman, Duties, 305-306
- State Party Committee, Duties, 304-305
- Officers, 303
- Order of Business, 304
- State Party Officers, 305-307
- State Party Rules, 301-310
- States, Agreements of, 119-120
- Police Power, 193-195
- Power to Enact Inspection Laws, 194
- Railroad Rates, 185-187
- Residual Powers, 33, 159
- Taxation by, 39-40
- Statutes, Method of Interpreting, 185 in Pamphlet Form, 366-367
- Steamboats, Exclusive Rights by States, 174
- Power of Congress to License, 179
- Succession, of Colonial Governor, 8-9 of President, 70-71
- Submarine Warfare, 198
- Subpœna, Purpose, 297
- Form, 298
- Suffrage, Literacy Test, 199-206
- Negro, 199
- Summons, Purpose, 297
- Form, 298
- Supreme Court, Influence of "Federalist," 11
- Judicial Review, 43-47, 159
- Jurisdiction, 42-43
- Oath, 46-47
- Opinion on Interstate Rendition, 50-52
- Reports in Pamphlet Form, 368
- "Susan B. Anthony" Amendment, see Nineteenth Amendment.
- Taft, W. H., on Power to Tax Child Labor, 158-163
- on Recall of Judges, 99-108
- Tariff Commission Surveys, 365
- Taxation, Assessment Defects, 289-296
- Colonial Governor Levied, 6
- Congress' Power Limited, 159
- Corporation, 162, 196
- of Narcotics, 162
- of Oleomargarine, 191, 196
- Pamphlets, 376
- Power of States, 39-40
- Is Power to Destroy, 39
- of State Bank Notes, 160, 196
- Tax-exempt Securities Amendment, 69
- Tenth Amendment, Meaning, 159, 194
- Territories, Administration, 366
- Thirteenth Amendment, Proposal, 109-111
- Traffic Board, Work of Federal, 172
- Transportation Act (1920), Provisions, 180, 181-184
- in Pamphlet Form, 366
- Treaties, in Pamphlet Form, 367
- Limitations on Power to Make, 118
- Power to Lease Land by, 117-118
- Treaty of Commerce with Japan, Senate Reservation, 97
- Text, 89-98
- True-bill, 297, 299-300
- Unfinished Business, on Calendar of House, 138
- Unicameral Legislature, Argument in Favor, 248-249
- Attempt to Secure in Arizona, 246-249
- Uniform Marriage and Divorce Amendment, 67-68
- "Union Calendar," in House of Representatives, 137-140
- Union, Plans of, 363
- Vermont Legislative Districts, 225
- Veto Message, Text of Taft's, 99-108
- Virginia, Legislature, 20-21
- Virginia and Kentucky Resolutions, 364
- Vote, Congressional, 222
- for State Legislature, 224-225
- Right to, see Suffrage.
- Voting Machines, Used in New York, 205
- War, Declaration with Germany, 198
- War of 1812, Financial Condition Following, 31
- Wards, Inequalities in Size, 226
- Webster, D., on Citizenship by Birth, 61

- Webster, N., Opinion of "Federal-
ist," 11
- White Slave Traffic Act, 191, 197
- Wickersham, G. W., Opinion of At-
torney General, 116-121
- Wilkerson, J. H., Shopmen's Injunc-
tion, 151-157
- Wilson, W., Called Special Session,
198
- Women, Amendment Giving Equal
Rights, 68
- Organizations Lobbying for,
148
- Women Suffrage, 62-65

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